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Protecting and Assisting Refugees and Asylum-Seekers in Malaysia: The Role of the UNHCR, Informal Mechanisms, and the 'Humanitarian Exception'

Jera Beah H. Lego

Abstract

This paper problematizes Malaysia's apparently contradictory policies – harsh immigration rules applied to refugees and asylum seekers on the one hand, and the continued presence and functioning of the United Nations High Commissioner for Refugees (UNHCR) on the other hand. It asks how it has been possible to protect and assist refugees and asylum seekers in light of such policies and how such protection and assistance is implemented, justified, and maintained. Giorgio Agamben's concept of the state of exception is employed in analyzing the possibility of refugee protection and assistance amidst an otherwise hostile immigration regime and in understanding the nature of juridical indeterminacy in which refugees and asylum seekers in Malaysia inhabit. I also argue that the exception for refugees in Malaysia is a particular kind of exception, that is, a 'humanitarian exception.' Insofar as the state of exception is decided on by the sovereign, in Carl Schmitt's famous formulation, I argue that it is precisely in the application of 'humanitarian exception' for refugees and asylum seekers that the Malaysian state is asserting its sovereignty. As for the protection and assistance to refugees and asylum seekers, it remains an exception to the rule. In other words, it is temporary, partial, and all together insufficient for the preservation of the dignity of refugees and asylum seekers. To make these arguments, the paper begins with a brief history of Malaysia's encounters with refugees and asylum seekers, that is, occasions when 'humanitarian exceptions' were invoked through the issuance of IMM13 permits. Next, it describes Malaysia's current de facto policy towards refugees in the context of mixed migration to provide a picture of the kind of juridical order from which refugees and asylum seekers are at times exempted. Then, it describes the role of the UNHCR in protecting and assisting refugees and asylum seekers through the implementation of a number of informal mechanisms in cooperation with non-government organizations

(NGOs) within and through this state of exception. To conclude, the paper offers some preliminary insights on the implications of the foregoing for the evolution of refugee rights in Malaysia.

I. Introduction

In 2010, the office of the United Nations High Commissioner for Refugee (UNHCR) in Malaysia received 25,600 new refugee status applications, the largest number of applications to any UNHCR office in the world for the third straight year, and the seventh largest to any refugee status determining body including states (such as South Africa and the United States).[1] According to the office of the UNHCR in Malaysia, as of the end of March 2012, there were some 97,400 registered refugees and asylum seekers in the country. Of these, some 81,800 are from Myanmar which include 33,200 Chins, 21,000 Rohingyas, 9,800 Myanmar Muslims, 4,200 Rakhines, 3,400 Mons, and 3,100 Kachins and other ethnic minorities from Myanmar. Some 8,200 refugees and asylum-seekers are from other countries - 4,400 Sri Lankans, 1,000 Somalis, 790 Iraqis and 440 Afghans. Of the entire refugee population, some 20,00 are children below the age of 18. In addition, another 10,000 unregistered refugees and asylum seekers are believed to be living in Malaysia.[2]

Despite the huge volume of refugees and refugee status applications, Malaysia is not a signatory to the 1951 Convention Relating to the Status of Refugees (hereinafter, the 1951 Convention) nor its 1967 Protocol. As a result, there is no legal framework for distinguishing a refugee or an asylum seeker from any other undocumented migrant. Malaysian law thus views refugees, asylum seekers, and stateless persons no differently from an 'illegal immigrant' who is subject to fines, arrest, detention, imprisonment, corporal punishment, and deportation. Exemption from such penalties is only possible through the granting of special permits, known as IMM13 permits, issued by the Ministry of Immigration. Such permits have been granted on a number of occasions, the circumstances of which will be discussed later. In general, however, refugees, asylum seekers, and stateless persons have to contend with Malaysia's harsh immigration rules just like any other undocumented migrant. Another way that a refugee may find reprieve from Malaysian immigration law is through the intervention of the UNHCR. As Alice Nah describes, the UNHCR, with the support of growing networks of local and transnational actors, has been the lead agency in promoting international protection of refugees and asylum seekers in Malaysia.[3]

It is difficult to ascertain precisely why the Malaysian government allows the UNHCR to operate in Malaysia and implement its activities related to refugees and asylum seekers. Efforts to interview the UNHCR in Malaysia were declined while attempts to speak with representatives from the Malaysian government could not be made possible due to time and other constraints. What could be ascertained is that in the public discourse, the Malaysian government allows the presence of the UNCHR on the basis of 'humanitarian reasons.' In a

press release issued on December 16, 2008 regarding the presentation of the letter of appointment of Alan Vernon, the current UNHCR Representative to Malaysia, the Ministry of Foreign Affairs stated:

> Although Malaysia is not a State Party to the 1951 Convention and its Protocol Relating to the Status of Refugees, it has not prevented Malaysia from cooperating with the UNHCR in addressing international refugee issues on humanitarian grounds.[4]

The extent to which the Malaysian government cooperates with the UNHCR is another matter. The Malaysian government allows the UNHCR to perform its activities such as refugee status determination and to some extent, as will be discussed later, even recognizes the validity of this procedure. For example, on July 5, 2010, Foreign Minister Datuk Seri Anifah Aman reiterating the primacy of Malaysian law over refugees in Malaysia, said that refugees are subject to detention under the Immigration Act with one caveat:

> However, on humanitarian grounds, these people are handed over to the UNHCR (on request) if they can prove that they are under the protection of the organisation and had obtained verification from it.[5]

How can we better understand Malaysia's apparently contradictory policies – harsh immigration rules applied to refugees and asylum seekers on the one hand, and the continued presence and functioning of the UNHCR on the other hand? How has it been possible to protect and assist refugees and asylum seekers in light of such policies? A handful of literature has been written on the UNHCR's effort to intervene, address protection gaps, and provide material assistance through various informal mechanisms. This paper attempts to address the questions raised above and to add to the literature describing and understanding efforts to protect refugees and asylum seekers in Malaysia.

A key concept that will be employed throughout this article concerns the notion of the state of exception. Giorgio Agamben defines the state of exception not as a special kind of law but "a suspension of the juridical order itself" during times of perceived emergency.[6] In the state of exception, one is in "a zone of indistinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer made any sense."[7] As such, it serves as "the original structure in which law encompasses living beings by means of its own suspension."[8] It is located at "the limit between politics and law,"[9] thus defining law's threshold or serving as its limit concept. Agamben laments that this transformation of temporary and provisional measures into a technique of government appears to be the dominant paradigm of government in contemporary politics.[10] In the case of Malaysia, I argue that the protection and assistance to refugees and asylum seekers is implemented, justified, and maintained on the basis of a

state of exception from Malaysia's otherwise hostile policy towards 'illegal immigrants.'[11] Furthermore, this exception is a particular kind of exception, that is, a 'humanitarian exception.'

I also use as a premise Carl Schmitt's famous formulation, "Sovereign is he who decides on the state of exception."[12] Schmitt is of course well known for his political agenda which was fundamentally authoritarian. In using his (and Agamben's) ideas in the context of human rights in contemporary democratic societies, I am only following in the footsteps of others such as Miriam Ticktin in her analysis of policing and humanitarianism in France.[13] Like Ticktin, I am by no means justifying the actions of the state as sovereign, not even saying that it is benevolent, in the sense that the state of exception they produce is a 'humanitarian' one. Rather, I wish to argue that it is precisely in the application of 'humanitarian exception' for refugees and asylum seekers that the Malaysian state is asserting is sovereignty. In no way is the state allowing other actors to diminish its authority. On the contrary, the Malaysian state is declaring its sovereignty in the very act of deciding on the exception. This conforms to Schmitt's notion that in the state of exception, the law recedes but the state remains.[14] As for the protection and assistance to refugees and asylum seekers, it remains an exception to the rule. To borrow Ticktin's phrasing, it is a space of juridical indeterminacy; it is based on "a logic of exception, rather than a regime of normative justice based on general rules and rights."[15] In other words, it is temporary, partial, and all together insufficient for the preservation of the dignity of refugees and asylum seekers.

To make this argument, the paper will begin with a brief history of Malaysia's encounters with refugees and asylum seekers, and the occasions when 'humanitarian exceptions' were invoked through the issuance of IMM13 permits. Next, I will describe Malaysia's current de facto policy towards refugees in the context of mixed migration. This should provide a picture of the kind of juridical order from which refugees and asylum seekers are at times exempted. Then, I will describe the role of the UNHCR in protecting and assisting refugees and asylum seekers through the implementation of a number of informal mechanisms within and through this state of exception. Information concerning these activities was culled through interviews with former UNHCR staff, non-government organization (NGO) workers, refugees and asylum seekers conducted over a period of two weeks in August 2010 in Malaysia.[16] To conclude, I will expound on the 'humanitarian exception' to Malaysia's policies and its implications for the evolution of refugee norms there.

II. Looking Back: Past Exceptions for Refugees and Asylum Seekers

1. Filipinos in Sabah[17]

From about 1972 until around 1984, large groups of Filipinos fleeing unrest from southern Philippines came to the eastern Malaysian state of Sabah.[18] It is believed that in the

beginning, some of them found socio-economic support from other Filipino migrants who arrived earlier while many others lived in shanties in towns and coastal areas. Starting in 1976, the UNHCR, with the help of the federal government, began providing assistance by resettling them into villages, by constructing basic infrastructure, and by providing livelihood opportunities. The Federal government granted them legal recognition through the issuance of HF7 permits (the precursor to the IMM13 permits) signed by the Minister of Home Affairs and which allowed them "to stay and work without limitation in Sabah and Labuan" though they were also "encouraged to return to their home country once the situation permits them to do so."[19] By 1976, some 30,000 work permits had been issued to Filipinos. The accommodating stance of Tun Mustapha, then Sabah's Chief Minister, made possible the temporary residence of some 100,00 Filipinos on 'humanitarian grounds.' In 1987, the UNHCR stopped providing assistance to the Filipinos because they had "determined that this refugee group had a standard of living comparable to the local population."[20] With UNHCR's withdrawal, the *Unit Penempatan* (Resettlement Unit) under the office of the Sabah Chief Minister took over.

The Malaysian government's positive, if not accommodating response to the Filipinos in the 1970s and the 1980s can be attributed to several factors. For one, the arrival of Filipinos in the 1970s occurred at a time when the logging and plantation sectors were expanding but the Sabah state was having difficulty meeting the labor demands due to a small population size and the difficulty of bringing in labor from the more populated Western states.[21] Another possible reason for the state of Sabah's acceptance of Filipinos is Mustapha's claim of ancestry to the Sultanate of Sulu from where they came from and which purportedly obliged him to protect his brethren.[22] Perhaps more convincingly, acceptance of Filipino Muslims and the possibility of their assimilation helped to increase support for Mustapha's Islamic political party (the United Sabah National Organization) in an otherwise non-Malay-Muslim dominated state. Estimates show that in fact, more than 800,000 conversions to Islam took place in Sabah between 1960 and 1980, indicating an increase of Muslims from 40 percent in 1970 to 51 percent of the total population by 1980.[23] It is unclear if the Filipino Muslims helped to affect these conversions but the numbers lend credence to the hypothesis that the state of Sabah sought to Islamize its population and that the acceptance of Filipinos was part of this policy. The situation of Filipinos in Sabah remains problematic to this day and the policies of the Sabah state government towards Filipinos in the 1970s are not necessarily demonstrative of Malaysian attitudes towards refugees in general but they illustrate the link between Malaysia's complex ethnic composition, the Islam factor, and refugee policies.

2. Vietnamese Refugees

Not long after Filipinos started arriving in Sabah en masse, so-called Vietnamese 'boat people,' mostly ethnic Chinese fearing reprisal from other Vietnamese after Saigon's surrender to North Vietnam, started reaching Malaysian shores in April 1975. Through

cooperation with the UNHCR under the Comprehensive Plan of Action (CPA), Malaysia (as well as other Southeast Asian countries) hosted some 250,000 of these Vietnamese of which 240,000 were resettled and 9,000 were repatriated. During the same period, Malaysia also hosted some 13,000 Muslim Chams from Cambodia some of whom settled in parts of Malaysia.[24] While largely viewed as a success, the resettlement of the Vietnamese 'boat people' under the CPA has been criticized in terms of enforcing international refugee law.[25] Several pushbacks of refugees arriving in small boats occurred and Southeast Asian states were seen as callous if not cruel to the refugees. To illustrate one extreme Malaysian view, then Deputy Prime Minister and Home Minister Mahathir Mohammad was quoted saying that refugees landing in Malaysia would be shot on sight. Foreign Minister Ghazali Shafie later clarified this statement saying that Mahathir actually meant "shoo on sight."[26] Other factors came into play in resolving the 'boat people' crisis. For one, Southeast Asian states saw the refugee influx as a consequence of US actions in Vietnam and therefore felt that the US and its allies had to take responsibility for it. Another factor was that Vietnamese authorities were believed to be involved in smuggling out the ethnic Chinese from Vietnam.[27] The ethnicity of these refugees also affected Malaysia's policy. Since 70 to 80 percent of the Vietnamese refugees were ethnic Chinese, Malaysian authorities were distressed not only by the huge volume but also by the fear that the new refugees would "upset Malaysia's racial balance."[28]

3. Thai Muslims

In January 1981, Malaysia encountered a new group of refugees, some 1,000 Thai refugees who fled into the Sik, Baling, and Kroh districts of Kedah and Perak.[29] Thailand requested the repatriation of the refugees but Malaysia refused. Malaysia's request for UNHCR involvement upset the Thai government which preferred that the issue remained a bilateral one.[30] The Malaysian government was seen to be vacillating over the issue for some time but, by June 1981, a total of 1,251 Thai Muslims were officially claimed to be receiving 'humanitarian aid' as recognized refugees until their voluntary repatriation was possible.[31] Malaysia's response to the incident should certainly be seen in the context not only of its co-religionist tendencies but also in the context of bilateral relations with Thailand.[32] The issue was further complicated by Malaysia's alleged support for Thai Muslim separatists and the presence of the Communist Party of Malaya (CPM) along the Thai-Malaysia border. As its next-door neighbor, Thailand is also an important bilateral partner. In any case, Malaysia's response to the Thai Muslim refugees provides a stark contrast to its response to Vietnamese refugees discussed earlier.

4. Bosnian Refugees

In the 1990s, Malaysia under Prime Minister Mahathir staunchly supported the cause of the Bosnian Muslims during the Bosnia-Herzegovina crisis as part of an increasingly 'strident' Islamic stance and as part of aspirations for middle power status.[33] In addition to persistent

lobbying in the UN and the deployment of troops as part of the UN Protection Force (UNPROFOR) mission, Malaysia provided refuge to 360 Bosnian refugees. Malaysia also 'adopted' Bosnian refugee camps in European countries around Bosnia-Herzegovina through the UNHCR. The policy enjoyed public support as evidenced by the fact that the newspaper *Utusan Malaysia* was able to raise more than 3 million ringgit (roughly US$975,000) worth of contributions from the private sector for the Bosnian war victims.[34]

5. Acehnese Refugees

Acehnese refugees arrived in Malaysia beginning in 1991 when the first boatloads of 51 refugees landed on the island of Penang.[35] Those refugees were fleeing counter-insurgency operations conducted by the Indonesian military against the Free Aceh Movement or *Gerakan Aceh Merdeka* (GAM). Coinciding with the declaration of martial law in Aceh on March 19, 2003, the number of Indonesian refugees registered with the UNHCR jumped to 3,198 from only 144 in the previous year.[36] Responding to this influx, the Minister of Information Khalil Yaacob was quoted saying, "We will treat them [the Acehnese] as we do other refugees. We will detain them and send them back."[37] At the same time, Malaysian government officials expressed support for the government of Indonesia and stated its intention not to recognize the Acehnese as refugees.[38] In 2005, however, the Malaysian government reversed its statement by announcing the issuance of temporary stay permits known as IMM13 cards for the Acehnese. According to Nah & Bunnell, one reason for this about-face is the overwhelming public sympathy for the Acehnese in the wake of the tsunami that struck on December 26, 2004, only a few months prior to the announced issuance of IMM13 cards.[39] Another possible reason is the unexpected labor shortage as a result of the immigration crackdown. Some 400,000 foreigners had taken advantage of the amnesty offered by authorities prior to the immigration crackdown resulting in labor shortages in the manufacturing, construction, plantation, and services sector worth hundreds of millions of ringgit.[40] The timing is also seen as convenient in so far as relations with Indonesia are concerned because a peace agreement between GAM and the government of Indonesia was reached by August 2005. Regardless of the Malaysian government's true motives, some 30,000 IMM13 permits were issued to Acehnese refugees on 'humanitarian grounds.'[41]

6. Rohingya Refugees

Another group of refugees that the Malaysian government has offered IMM13 permits to are the Rohingya refugees who have been arriving in Malaysia as early as the 1980s and in larger numbers starting in 1992.[42] The Rohingyas are a stateless Muslim minority of South Asian descent, originating from Myanmar's North Arakan (Rakhine) State, adjacent to Bangladesh. Abuses suffered by the Rohingyas under the military junta for decades including severe restrictions on their movement, forced labor, arbitrary confiscation of property, systematic rape, and religious persecution are well documented. By 1993, the

UNHCR had registered and issued certificates to some 5,100 Rohingyas but Malaysian authorities often did not honor these certificates. As such, the Rohingyas were subjected to arrest, detention, punishment, and deportation to the Thai-Malaysia border. In October 2004, however, the Malaysian government announced its decision to regularize the residency of the Rohingyas and from August 1, 2006, the government started the process of registration of approximately 12,000 Rohingya refugees with a view to granting them IMM13 permits. The Immigration authorities did not rely on UNHCR registration records or engage with the UNHCR in the identification and registration process; they relied instead on a few Rohingya community representatives to perform the registration. Amid allegations of corruption and fraud, the registration exercise was suspended within 17 days and has not been resumed ever since. The 5,000 Rohingyas who had paid the mandatory 90 ringgit (roughly US$30) registration fee were not issued the permit.[43] Today, ethnic Rohingyas continue to eke out a living in Malaysia, along with thousands of other ethnic minorities that have fled Myanmar. Efforts to protect and assist them will be discussed in detail in the next section.

7. Trends in the Humanitarian Exception

Malaysia's response to the various refugee groups mentioned above demonstrates a discernible pattern: a marked tolerance or at least an effort to appear tolerant and accepting of Muslim refugees compared to those of other ethnic origins. This is evident in Malaysia's response to the Filipinos, Thais, Chams, and Bosnian Muslims, as well as in the decision to grant IMM13 permits to the Rohingyas at a certain point, in contrast to the Vietnamese. This is not to say that persecuted Muslims are guaranteed sympathy from the Malaysian government, only that it influences the Malaysian government's policies. This pattern should not be surprising considering the role of Islam in Malaysian foreign policy and its desire for a leadership role among Muslim nations. Malaysia's leadership role in the Organization of the Islamic Conference (OIC), its consistent support for Palestine, and its support for Islamic studies are well known. Moreover, as *Wisma Putra* or Malaysia's Foreign Ministry has stated, "as a country with a strong Muslim majority, Malaysia also gives strong importance to the *Ummah*."[44] As Nair notes, "Islam has provided direction and content for the foreign policy of Malaysia."[45] Another point worth mentioning is that this exception from the immigration regime is never explicitly declared to be based on concern for Muslims, rather it is based on humanitarianism. This preference "to reiterate its motives and policy on all Muslim refugees as being purely humanitarian" is, according to Nair, "in consideration no doubt of the problems it might encounter from its own non-Malay-Muslim population if it conceded a shared ethnicity or religion as deciding factors."[46] Outward concern for Muslim refugees is also tempered by other considerations deemed important by the Malaysian government such as bilateral relations as shown in the case of the Thai Muslims and Acehnese refugees.

III. The Current Context: Mixed Migration and a Hostile Immigration Regime

Having described previous exceptions to Malaysia's immigration regime, I will now turn to a discussion of the current immigration regime which can only be understood in the context of mixed migration. As a result of continued economic growth throughout the 1980s and the 1990s, Malaysia has become the largest labor-importing country in Southeast Asia. Foreign migrant workers primarily from Indonesia, and others from Nepal, India, Burma/ Myanmar, Bangladesh, the Philippines, Pakistan, and Thailand, comprised between 20 to 25 percent of the labor force since the 1990s. As of 2007, 2.8 million or some 23 percent of Malaysia's 12 million-strong labor force consisted of migrant workers. In addition, it is estimated that there are 800,000 to over one million undocumented migrant workers in the country.[47]

In response to this growth in the number of undocumented workers, Malaysian authorities have increasingly sought to regulate immigration flows by implementing controls and imposing various penalties. Section 6 (3) of the Immigration Act of 1959/ 1963 (revised in 1975 and 2002) provides that anyone found guilty of illegal entry shall be "liable to a fine not exceeding 10,000 ringgit (roughly US$2,800) or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes."[48] Anyone who overstays their visa is also liable to a fine not exceeding 10,000 ringgit or to imprisonment for a term not exceeding five years or to both.[49] In addition, Malaysian immigration officials, along with the police and civilian group known as the People's Volunteer Corps (or RELA from the Malaysian name *Ikatan Relawan Rakyat*) conduct periodic crackdowns (preceded by brief periods of amnesty) during which they arrest, detain, imprison, and/or deport undocumented migrants. Between 1992 and 2000, Malaysian authorities arrested some 2.1 million undocumented migrant workers.[50] In 2003, following the amendments to the Immigration Law, some 42,900 undocumented migrants were arrested, 9,000 of which received corporal punishment.[51] Within two years of the 2002 amendment, an estimated 18,000 undocumented migrants were whipped.[52] At the time of writing, a crackdown was currently in force. A period of amnesty – a deadline for the registration of undocumented migrants – was extended until April 10, 2012 but NGOs report that between February and March 2012, about 323 alleged undocumented migrants were arrested for possible deportation.[53]

The entity known as RELA needs to be discussed briefly. A number of legislations were put into force as a result of four Proclamations of Emergency issued throughout the 1960s. One of these is the Emergency (Essential Powers) Act 1964, later known as the Emergency (Essential Powers) Act 1979, which contains Essential (RELA) Regulations 1966 providing for the creation of the RELA.[54] There are no educational nor physical requirements for admission into this volunteer corps. Anyone above the age of 16 can join and there are no background or criminal checks. New members need only to attend about 10 days of training.[55] By virtue of the Essential (Amendment) Regulations 2005, the powers of

the RELA have been

> dangerously over-extended giving RELA personnel the right to bear and use firearms, stop, search and demand documents, arrest without a warrant, and enter premises without a warrant. And all these powers can be exercised if [sic] the RELA personnel has reasonable belief that any person is a terrorist, undesirable person, illegal immigrant or an occupier.[56]

Under the Public Authorities Protection Act 1948, RELA members are also immune from prosecution.[57] Up until June 2007, members of RELA received a reward of 80 ringgit (about US$22) for every undocumented migrant they arrested.[58] In March 2012, a new initiative by the government would allow the RELA to wear police uniforms to boost "omnipresence" among the public while on joint patrols with policemen.[59] RELA currently has about 3 million members, representing about a tenth of the entire Malaysian population.[60] The four Proclamations of Emergency that provide the basis for RELA's existence were revoked in 2011 but the Malaysian government is to present a new law governing RELA at the next session of the Parliament in 2012.

Section 55 of the Immigration Act provides that the Minister may by order exempt any person or class of persons, absolutely or conditionally, from any of the provisions of the Immigration Act.[61] Based on this provision, IMM13 visas have generally served as temporary residence permits. While the decision to grant IMM13 permits is to be based on information provided by the applicant concerning their reasons to seek for exemption, in practice, the precise criteria is unknown and there is no way for the applicant to challenge the decision of the Minister.[62] As described in the previous section, IMM13 permits have been issued in the past but only on rare occasions for particular refugee groups. As such, refugees who find themselves in Malaysia would normally have to contend with the conditions described here.

In addition to hostile immigration laws, frequent crackdowns, and broad policing powers augmented with the help of the RELA, repressive laws help to assure that criticism of the Malaysian authorities (whether on matters pertaining to the treatment of refugees or not) could be effectively suppressed. This in fact occurred in the case of Irene Fernandez, Director of the NGO *Tenaganita*, who reported on the conditions of detention in a memorandum entitled Abuse, Torture, and Dehumanized Treatment of Migrant Workers at Detention Camps. Irene Fernandez was charged under section 8A(1) of the Printing Presses and Publications Act for "maliciously publishing false news." In 2003, Fernandez was sentenced to 12 months' jail for which she made an appeal.[63] In 2008, 13 years after the criminal case was filed against her, she was acquitted "on the grounds that the appeal record was incomprehensible."[64] Meanwhile, the government is trying to pass a new law called the Security Offenses Bill (Special Measures) 2012 which human rights organizations fear

would lead to greater human rights violations. The bill allows police to detain persons believed to be involved in 'security offences' for up to 28 days without any charge, to suspend access to lawyers up to 48 hours, and to attach an electronic monitoring device to the person after release.[65]

As this section has sought to establish, illegal entry and illegal stay into Malaysia are considered criminal acts. Anyone without the proper documentation are faced with hostile immigration rules, enforced through periodic crackdowns, and implemented by increasingly powerful immigration, police, and civilian authorities. Meanwhile, criticism of the government is repressed. The only thing standing between a refugee or an asylum seeker and such harsh treatment is exemption granted by immigration authorities through a rather opaque process. The next section deals with how the UNHCR intervenes into this hostile immigration regime in order to protect and assist refugees and asylum seekers. For their protection, the names of some of the interviewees will be omitted.

IV. The Role of the UNHCR: Protection and Assistance Mechanisms

1. Registration

The first step towards providing protection for asylum seekers is for the UNHCR to be come aware of their presence through registration. Not all asylum seekers know about the UNHCR and the possibility of seeking asylum; some have lived in the country for years before they learned about the UNHCR. To reach those asylum seekers in far-flung areas, many of them living in makeshift huts in jungles, the UNHCR started organizing mobile registration in 2004. That year, at least 600 Acehnese were registered as a result of one mobile registration exercise in Penang.[66] According to some interviewees in this research, the UNHCR learns about the presence and location of asylum seekers in the country through refugee community organizations. Due to limited resources, these mobile registrations are not conducted regularly, only as needed and when there are enough staff available. Also, not all refugee groups are as close-knit and organized as others. For example, most of the interviewees for this research were in agreement that the Rohingyas are the least organized among the refugees originally from Myanmar. Sri Lankans and Afghans as well do not have the kind of community organizations that many of the ethnic groups from Myanmar have.[67]

Those who do know about the UNHCR and who have the means make the trip to UNHCR's Kuala Lumpur office even though they run the risk of being stopped by the authorities along the way. Initial registration should take less than one hour, according to a current UNHCR staff that I spoke with.[68] As a matter of organizing the large number of applications, asylum seekers from different countries of origin are allocated a particular day of the week to register. Some of the interviewees for this research have suggested that the UNHCR has at times tried to limit the number of asylum applications at a given time due to pressure from the government. A former refugee status determination (RSD) officer

described this as a kind of "unspoken quota"[69] while an NGO worker said that the UNHCR tries to "keep the numbers stable"[70] so as not to surprise the Malaysian government officials who seem to think that the more refugees are registered, the more refugees will be drawn to Malaysia.

Once registered, asylum seekers are issued a document proving that the bearer is applying for refugee status and is a 'person of concern' for the UNHCR. The appearance and name of this document issued upon initial registration have varied over time. For example, in early 1992, the UNHCR issued letters to the Rohingya stating that they were "applying for recognition of refugee status under the High Commissioner's mandate."[71] Later that year, these letters were replaced with "periodically renewable certificates listing family members with their photographs, declaring that the individual was a "Rohingya Muslim from Myanmar."[72] Renewal of these certificates stopped in 1998 and the UNHCR began screening Rohingyas individually to determine if they were genuine refugees. In 2002, the UNHCR began to issue 'temporary protection letters' to the Rohingya, and a year later, to the Acehnese as well. These 'temporary protection letters' were in the form of a letter, printed with black ink on white paper while recognized refugees were given blue letters with a colored photo of the bearer affixed. These letters apparently did not appear 'official' and authorities tended to disregard them. Towards the end of 2004, UNHCR began issuing laminated, tamper proof cards in place of the letter-format documents. According to Nah, these cards which appeared more 'professional' were given better recognition by authorities. She adds that it was possible authorities had gained greater awareness of the UNHCR and its function by the end of 2004, leading to better recognition of the new card-format identification.[73] Three of the refugee community leaders (1 Chin Burmese, 1 Zomi Burmese, and 1 Karen Burmese) interviewed for this study referred to the document issued to them as 'UC' or 'under consideration' card.[74]

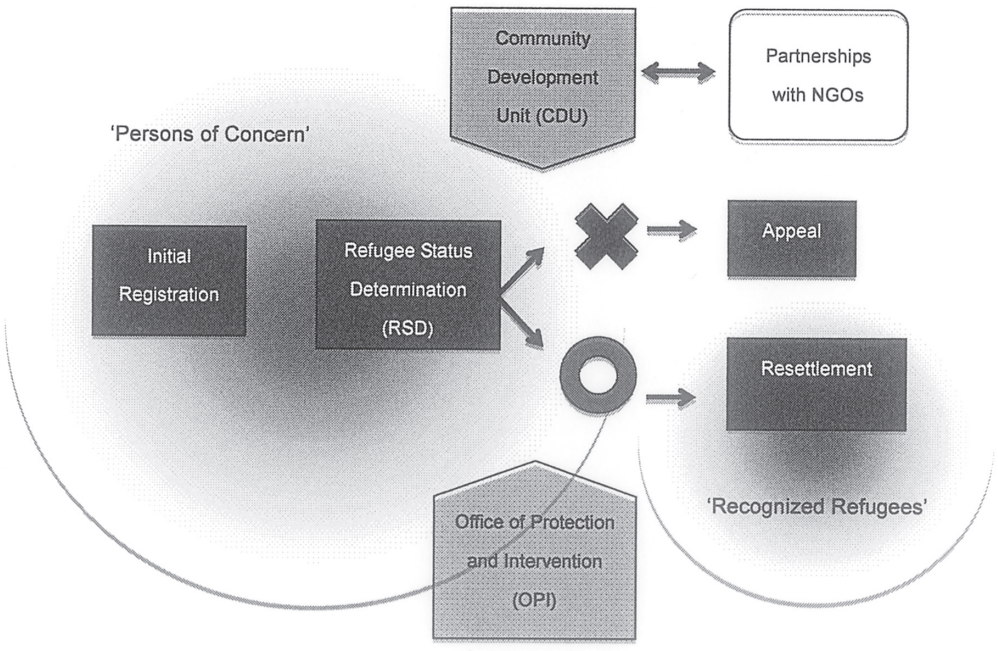
2. Refugee Status Determination

The next step in order to become a recognized refugee is for the asylum seeker to undergo a refugee status determination (RSD) procedure where a UNHCR officer carefully examines an asylum seeker's account, cross examines this information with information about their country of origin, and makes an assessment of the credibility of their asylum claim. The criterion for assessing this, as stated in the 1951 Convention, is that an asylum seeker has "a well-founded fear being persecuted for reasons of race, religion, nationality, membership of a social group or political opinion."[75] Depending on the number of cases the UNHCR is working on, getting an appointment for RSD could take anywhere between three months to a year except in cases of extreme vulnerability, such as in the case of an unaccompanied minor, where an appointment could be made within a month. The RSD interview itself takes time. One former RSD officer that I spoke to said that on average they saw two cases each day while another said it could take more than a day.[76] Getting the results of the RSD takes even longer. One Chin Myanmarese refugee who registered in 2003 was able to

receive the result of his RSD procedure in 2006 after five RSD interviews. Another refugee, a Karen from Myanmar, was able to receive recognition within one year from registering with the UNHCR in 2008 while a third interviewee, a Zomi refugee also from Myanmar, received his UC card in 2009 but had yet to go through RSD at the time of interview for this research in August 2010.[77]

If on one hand, the result of the RSD procedure is a negative decision, applicants are given up to two weeks to make an appeal. After this time, if no appeal is made, the decision becomes final. One of the social workers interviewed for this study shared her experience assisting Afghan refugees in making appeals. According to her, the chances of succeeding in making an appeal are quite high. Of about ten appeals that she has written, all were successful.[78] If, on the other hand, the result of the RSD procedure is a positive decision, the UNHCR then works to find a resettlement place for the recognized refugee because Malaysia does not legally allow for local integration of refugees, recognized or otherwise. At the time of the interview for this study in 2010, the Chin Myanmarese refugee who registered in 2003 and received the result of the RSD in 2006 had just received news that he and his family would be resettled in the US.[79] Figure 1 is a schematic diagram of UNHCR-Malaysia's procedure for refugee status application based on the process presented here.

Figure 1. UNHCR - Malaysia's Refugee Status Application Procedure



3. Protection

UNHCR documentation affords some informal protection but even those who become 'recognized' refugees are still vulnerable to arrests, detention, corporal punishment and deportation. Malaysia's national human rights commission (*Suruhanjaya Hak Asasi Manusia* or SUHAKAM), in its 2009 Annual Report admits, "refugees/asylum seekers are vulnerable to arrest even if they possess a UNHCR card."[80] One former RSD officer described it as "boiling down to the officer's discretion."[81]

To improve protection of all 'persons of concern,' the UNHCR has a division called Office of Protection and Intervention or OPI. OPI monitors reports of arrests and detention and, when necessary, visits detention centers to 'claim' detained persons of concern. A former RSD officer who worked at UNHCR in Malaysia until around 2008 said that there were six staff under OPI while the current UNHCR staff said there were now about 15 people in OPI and 150 staff in the entire office.[82] It seems that the UNHCR coordinates with NGOs in terms of protection and intervention, to some extent. For example, Temme Lee of SUARAM said, "when we get information on refugees or asylum seekers about to be deported, we try to intervene by turning to UNHCR, alerting the human rights commission, sending protest letters."[83] One interviewee working for an NGO that provides health services for refugees and asylum seekers said that they also submit names of possible 'persons of concern' when they encounter them in the course of their work.[84] In terms of advocacy and protesting against abuses, however, the UNHCR appears less inclined to openly ally with NGOs that engage in such activities. To put it more bluntly, as one NGO worker confided, "we [NGOs] can speak out in the way that [sic]UNHCR can't," and "there are certain things that the UNHCR must not look like they are doing and that's where we come in."[85] The implication is that there is an unspoken division of labor between the UNHCR and NGOs or NGO workers that openly criticize the government.

According to Amnesty International (AI), police would typically contact the UNHCR by phone or in person when persons claiming to be under the protection of UNHCR are arrested. If only a few people are arrested, their registration status can be confirmed immediately and the individual/s released. If the number is larger, the detainees are taken to police lock-up, the verification process takes longer and those arrested must remain in detention until the process is complete.[86] If the arrest is done by members of RELA or by immigration officials, refugees are taken to one of 13 detention centers. There, detention center officials send a letter to UNHCR listing those whose registration status needs to be checked. UNHCR then has to confirm by letter which individuals are registered in order to secure their release.[87] However, delays often occur on both sides: detention centers take too long to contact UNHCR while UNHCR sometimes takes too long to respond.[88]

A 2010 report by AI details increasing instances of 'catch and release' rather than 'catch and detain.' For example, in 2009, UNHCR reported that there were 6,800 registered asylum seekers in detention. Of these, 4,600 were released in the same year, a significant improvement from 2008 when UNHCR was only able to secure the release of 500 people.[89]

One interviewee working for an NGO providing medical services disclosed that in the past, whenever a detained woman gives birth at a hospital, immigration authorities would bring her and her newborn child back to the detention center immediately after giving birth. This practice has stopped, according to the interviewee.[90] It is uncertain, however, whether these improvements should be taken as a sign of a growing recognition of refugee rights at all. As one interviewee observed, Malaysian officials release 'persons of concern' upon recognizing, "*Ini orang UNHCR*," that is, literally, "this is a UNHCR person."[91] Unfortunately, such an acknowledgement does not demonstrate any appreciation of genuine asylum claims and the intrinsic rights of a refugee, as embodied in the 1951 Convention, only that by virtue of its association with the UNHCR, the person in question may be exempted from arrest.

4. Assistance

Asylum seekers, refugees, and all 'persons of concern' who are fortunate enough to evade arrest are still vulnerable to other kinds of abuse. To make a living and without a legal work permit, they are forced to find employment in the informal sector where they are vulnerable to exploitation. As non-citizens, they have limited access to healthcare and education for their children. The UNHCR in Malaysia attempts to address these problems through the Community Services division, later renamed Community Development Unit (CDU). In August 2009, UNHCR in Malaysia also launched the Social Protection Fund (SPF) whereby refugee community organizations can avail of up to 12,000 ringgit (roughly US$3,400) for community development projects. Between 2009 and 2011, more than 200 projects have been funded under the SPF.[92]

CDU partners with various NGOs to assist in providing healthcare services, education for refugee children and training for adults (e.g., language training and computer classes), temporary shelter for vulnerable persons, and other kinds of assistance to all 'persons of concern.'[93] To illustrate the kind of assistance that refugees and asylum seekers receive, I will discuss briefly the experience of one NGO worker, John (not his real name), who is involved in providing medical assistance to refugees, and of social workers involved in assisting refugee children. John's organization has a clinic in Kuala Lumpur that receives refugees and asylum seekers. They also conduct regular visits to detention centers and medical missions every two to three months to remote areas. In the case of visits to detention centers, detention officials allow those who need medical attention to receive treatment and medicine within the center, after which they return to their cells. In the case of visits, John's NGOs sends out 'feelers,' that is, they let members of the refugee community know that they are to visit some area so that those who might need medical assistance there could come on that day they are visiting.[94]

Another organization I wish to discuss is a kind of drop-off center for street children, a number of which turn out to be children of refugees or asylum seekers. The organization is a curious entity in the sense that it operates like an NGO but it also receives funding from a

government ministry. Its official policy is to assist every child in need regardless of their documentation yet some of their social workers have revealed having difficulties when the child they have to assist turns out to be a refugee. One social worker said that if they had to assist a refugee child, they would have to pay for it themselves "through their nose" (because they wouldn't be able to use their organizations' funds) while another social worker confided of being verbally harassed by the police for helping refugee children.[95]

V. The 'Humanitarian Exception' for Refugees in Malaysia

The foregoing discussion describes the tenuous framework constructed by the UNHCR for the purpose of protecting and assisting those they can identify as refugees and asylum seekers in the absence of any formal, legal rules and norms. Nah describes this as a "modest but important battle to create exceptions to existing state regimes concerning illegal immigrants."[96] However, it is not an exception made possible through efforts of the UNHCR and its partner organizations alone. Instead, it is made possible within and through a state of exception produced by the state. Precisely because it is in a state of exception that it displays features of juridical indeterminacy.

For instance, registration of asylum seekers is possible but not for everyone and not at all times. An 'unspoken quota' is at times in force without any legal basis but for the purpose of avoiding the ire of the Malaysian government. If true, this would be in contravention to the right to seek asylum stated in Article 14 of the Universal Declaration of Human Rights. The fact that registration is sometimes made through refugee communities seems to be a tremendous help but it also leaves the possibility that refugees without strong community ties are discriminated against. Prolonged delays in releasing the results of RSD also mean that asylum seekers were denied recognition and were vulnerable to great risk for a long time. Once an asylum seeker receives recognition as a refugee, the nature of the juridical indeterminacy in which they are made to inhabit becomes even clearer. As recognized refugees, they now possess documents that may allow for immediate (or delayed) release if they are detained. It may even prevent them from being arrested. The ambiguity was evident in an interview with a recognized Chin refugee who confided of being stopped and extorted money by the police even as he was expressing his gratitude to the UNHCR during the interview.[97] Nah describes this as "a condition of "(il)legality," that is, "an uncertain and unresolved socio-legal location in which they are possibly legal—through practices of exception—but remain illegal by default."[98] The same goes for accessing health and welfare assistance. The possibility of availing of such assistance is there yet it is limited, inadvertently favoring those with community linkages, sometimes subject to harassment by local authorities, but above all ambiguous as to whether it is lawful or not.

The fact that the protection and assistance of refugees and asylum seekers is made possible in a state of exception produced by the state is illustrated in the wording of the

following description of Malaysia's de facto policy towards refugees and asylum seekers prepared by the Malaysian Bar Council:[1]

- non-return to countries of origin until conditions are conducive,
- allowing refugees to work in the informal sector,
- allowing refugees to access health care services,
- allowing non-governmental organizations to provide assistance to refugees,
- cooperating with UNHCR on a humanitarian basis and allowing UNHCR to register, determine refugee status and extend protection to refugees,
- facilitating resettlement of refugees to third countries.

Notice that the authors of the policy paper use the term 'allow' with reference to access to work, health care services, and receiving assistance from NGOs. At first, it sounds as if the Malaysian state actively fulfills these needs when in fact they only allow the few NGOs and hospitals that provide these services to refugees to perform such activities. 'Allowing' therefore does not involve any active participation from the Malaysian state but only inaction, i.e., refraining from prohibiting the work of such service-oriented groups. In fact, 'to allow' refugees access to work is contrary to the notion that a refugee, as defined in the 1951 Convention, is entitled to work. 'Allowing' seems to suggest acquiescence when in fact it suggests a rejection that such rights exists for the refugee. Moreover, it demonstrates that such is possible not on the basis of any law (no such law exists for the recognition of refugees in Malaysia) but on the basis of an exception from the law that the Malaysian government permits.

Indeed, as has been repeatedly mentioned throughout this article, the term humanitarian is often invoked in Malaysia's characterization of its policies towards refugees. Specifically, humanitarianism is juxtaposed against the fact that Malaysia has not signed the 1951 Convention and is therefore not legally obliged to respect refugee rights yet it allows the UNHCR some room to perform all the activities described so far. A number of points can thus be inferred. First, the UNHCR's very presence, and more so its functioning, is an exception from Malaysian policy of non-accession to international refugee norms. Second, this exception is only made possible for humanitarian reasons. In that sense, the Malaysian government's non-accession to the international convention is justified and perhaps even rendered unnecessary by virtue of its alleged humanitarianism evident in the UNHCR's continued existence in Malaysia. The existence of refugees is tolerated, they are able to live and work thus there is no need for Malaysia to sign the refugee convention, as the argument goes. This line of reasoning was in fact expressed by former human rights commissioners interviewed for this study.[99] Humanitarianism therefore serves as justification to abrogate on Malaysia's otherwise well-defined policy of refuting international refugee norms. As mentioned earlier, the term 'humanitarianism' has also made possible the expression of concern for Muslim minorities when this did not conflict with other interests. In this manner,

the use of the term 'humanitarianism' appropriates a noble role for the Malaysian government while simultaneously distancing itself from the language of human rights or the rights of refugees and any obligation that the language of rights invokes. This perhaps is not unlike what Michael Barnett describes as the 'self-referential quality of humanitarianism.' That is, it is "first and foremost about ministering to the […] needs of the giver."[100] In the case of the Malaysian state, such needs correspond to either the requirements of managing the supply of labor, being a good Islamic state, a dependable bilateral partner, etc., as the need arises.

VI. Conclusion

To answer the questions raised at the beginning of this paper, protection and assistance of refugees and asylum seekers in Malaysia is implemented through informal mechanisms established by the UNHCR in cooperation with NGOs and made possible through a state of exception justified on the grounds of the Malaysian state's sporadic avowal of 'humanitarianism.' What does all this suggest for the evolution of refugee norms in Malaysia? It suggests that the language humanitarianism rather than the language of rights dominates the practice of refugee protection and assistance in Malaysia. In allowing certain exceptions for refugees, the Malaysian government is in no way acquiescing any of its sovereignty. Rather, it is asserting it. To be fair, humanitarianism makes small in-roads in the effort to provide much needed assistance to refugees – the UNHCR's existence in Malaysia is justified, service-oriented NGOs are allowed to function, and Muslim refugees especially are tolerated and sometimes even accepted into society. Acknowledging the possibilities held by the humanitarian appeal might help to further improve the cause of refugees in Malaysia, for instance by drawing attention to other Muslim refugees who languish in detention centers. This of course is insufficient. Acknowledging the limits of the Malaysian government's humanitarianism then becomes the starting point for recognizing that while a humanitarian approach is helpful, the cause of protecting and assisting refugees has to be premised on their rights guaranteed in international law if it is to be meaningful and just.

Notes

[1] United Nations High Commissioner for Refugees, "Figure 11, Main Destination Countries for New Asylum Seekers," *Global Trends 2010*, p. 26, http://www.unhcr.org/4dfa11499.html (accessed April 19, 2012).

[2] Office of the United Nations High Commissioner for Refugees in Malaysia, "Figures at a Glance," http://www.unhcr.org.my/About_Us-@-Figures_At_A_Glance.aspx (accessed April 20, 2012).

[3] Alice M. Nah, "Struggling with (Il)Legality: The Indeterminate Functioning of Malaysia's Borders for Asylum Seekers, Refugees, and Stateless Persons," in *Borderscapes: Hidden Geographies and Politics at Territory's Edge,* ed. Prem Kumar Rajaram and Carl Grundy-Warr (Minneapolis: University of Minnesota Press, 2007), pp. 46-47.

[4] Malaysian Ministry of Foreign Affairs, "Press Release: The Presentation of Letter of Appointment by Mr. Paul Alan Vernon, Representative of The United Nations High Commissioner for Refugees (UNHCR) to Malaysia" (December 16, 2008), http://www.kln.gov.my/web/guest/pr2008/-/asset_publisher/X9Nx/content/press-release-:-the-presentation-of-letter-of-appointment-by-mr-paul-alan-vernon?redirect=%2Fweb%2Fguest%2Fpr2008 (accessed May 15, 2012).

[5] "Refugees Subject to Malaysia's Law – Anifah," *Bernama* (July 5, 2010), http://www.kln.gov.my/web/guest/home;jsessionid=DA8868E26F2F03232052FF97659487E4?p_p_id=101_INSTANCE_Yt06&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_pos=6&p_p_col_count=10&_101_INSTANCE_Yt06_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_Yt06_urlTitle=refugees-subject-to-malaysia-s-laws-anifah-pelarian-di-malaysia-tertakluk-kepada-undang-undang-negara-anifah&_101_INSTANCE_Yt06_type=content&redirect=%2Fweb%2Fguest%2Fhome%2F-%2Fasset_publisher%2FLS0x%2Fcontent%2Fprivacy_policy (accessed May 15, 2012).

[6] Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: The University of Chicago Press, 2005) pp. 4, 2.

[7] Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life,* trans. D. Heller-Roazen (Stanford: Stanford University Press, 1998), p. 170.

[8] Agamben, *State of Exception,* p. 3.

[9] Agamben, *State of Exception,* p. 1.

[10] Agamben, *State of Exception,* p. 2.

[11] Prem Kumar and Grundy-Warr utilized the notion of the state of exception in their analysis of Australia's asylum policies but, interestingly, not in the case of Malaysia which they discuss in the same article. In "The Irregular Immigrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand," *International Migration* 42, no.1 (March 2004): pp. 33-64.

[12] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty,* trans. George Schwab (Chicago: University of Chicago Press, 1985), p. 1.

[13] Ticktin, Miriam, "Policing and Humanitarianism in France: Immigration and the Turn to Law as State of Exception*," Interventions: International Journal of Post Colonial Studies* 7, no.3 (2005), pp. 346-368.

[14] Schmitt, *Political Theology,* p. 12.

[15] Ticktin, "Policing and Humanitarianism in France," p. 348.

[16] Unfortunately, a formal request by this researcher to interview the staff of UNHCR—Malaysia was declined "so as not to endanger this relationship" with the Malaysian government whose "cooperation with the UNHCR on refugees issues is on a humanitarian basis." Yante Ismail, e-mail message to author, August 10, 2010.

[17] Sabah, along with Sarawak and Singapore, became part of the Malaysian Federation in 1963. Despite its status as a Malaysian state, Sabah continues to be disputed territory. The Philippine

government has not officially dropped its claim on the basis of history and the belief by the Bangsamoro people in Southern Philippines that Sabah is their ancestral homeland. Prior to the influx of people into Sabah in the 1970s and 1980s, social, economic, and cultural ties between Sabah and Southern Mindanao were already very strong.

[18] The following account is drawn largely from Azizah Kassim, "Filipino Refugees in Sabah: State Responses, Stereotypes, and the Dilemma over their Future," *Southeast Asian Studies,* 47-1 (June 2009), pp. 58-60.

[19] Kassim, "Filipino Refugees in Sabah," p. 60.

[20] Kassim, "Filipino Refugees in Sabah," p. 60.

[21] Kassim, "Filipino Refugees in Sabah," p. 58.

[22] Kassim, "Filipino Refugees in Sabah," p. 58.

[23] Shanti Nair, *Islam in Malaysian Foreign Policy* (London: Routledge, 1997), p. 183.

[24] Andrew Khoo, *Developing a Comprehensive Policy Framework for Refugees and Asylum Seekers in Malaysia* (June 2010), p.1, compiled and edited for the Malaysian Bar Council, based on consultations with participating non-government organizations, submitted to the UNHCR's annual dialogue in Geneva (unpublished).

[25] See Sara E. Davies, *Legitimising Rejection: International Refugee Law in Southeast Asia* (Boston: Martinus Nijhoff, 2008).

[26] Johan Saravanamuttu, *Malaysia's Foreign Policy: The First Fifty Years* (Singapore: Institute of Southeast Asian Studies, 2010), p. 168.

[27] Davies, *Legitimising Rejection*, p. 101.

[28] Saravanamuttu, *Malaysia's Foreign Policy,* p. 168.

[29] Just like southern Mindanao and Sabah, the Muslims communities of southern Thailand have close ties with Malaysia.

[30] Nair, *Islam in Malaysian Foreign Policy,* pp. 176, 178-179.

[31] Nair, *Islam in Malaysian Foreign Policy,* p. 179.

[32] The term co-religionist is used by Saravanamuttu repeatedly with reference to Malaysia's attitudes towards other Islamic countries and groups.

[33] Saravanamuttu, *Malaysia's Foreign Policy,* pp. 194-195.

[34] Saravanamuttu, *Malaysia's Foreign Policy,* p. 254.

[35] Since the sixteenth century, economic, political and cultural linkages existed between the Malay Peninsula and Aceh on the northeastern tip of the Indonesian island of Sumatra. Acehnese fleeing conflict with the Dutch since 1873 have migrated into the peninsula leading the establishment of permanent Acehnese settlements Kedah, Perak, Penang, and Langkawi. In Alice Nah and Tim Bunnell, "Ripples of Hope: Acehnese Refugees in Post-Tsunami Malaysia," *Singapore Journal of Tropical Geography,* 26-2 (2005), pp. 251, 255.

[36] United Nations High Commissioner for Refugees, *Statistical Yearbook 2005*, http://www.unhcr.org/4641be6f0.html (accessed November 30, 2010).

[37] Human Rights Watch, *Aceh Under Martial Law: Problems Faced by Acehnese Refugees in Malaysia* (April 2004), p.10, http://www.hrw.org/en/node/12153/section/1 (accessed May 15, 2012).

[38] Nah, "Struggling with (Il)Legality," pp. 46-47.

[39] According to Nah & Bunnell, "In addition to drawing international attention to Aceh and putting the conflict- ridden territory back on world maps, the tsunami re-humanised Malaysia's Acehnese refugee population. Images and reports of the devastation in Aceh in the mainstream media prompted Malaysians of different ethnic backgrounds – some of whom had apparently never heard of Aceh despite its geographical proximity – to approach Acehnese refugees to ask about the tsunami and to talk about their presence in Malaysia. Malaysian Islamic groups contacted refugee community leaders to find out how they could contribute to disaster relief; prayers for tsunami victims were held in district mosques, attended by both Malaysians as well as Acehnese refugees; and dialogue between Acehnese "Malay" citizens of Malaysia and the refugee population began to strengthen. Malaysian humanitarian organisations were some of the first to reach Aceh after the disaster. In the weeks and months following, hundreds of volunteers – doctors, nurses, psychiatrists, community workers – flew across the Straits to provide assistance. Famous dignitaries, politicians and media stars – some with Acehnese ancestry – paid visits to Banda Aceh, publicly expressing condolences." In Nah & Bunnell, "Ripples of Hope," p. 253.

[40] Annie Freeda Cruez, "Acute Labor Pains," *New Straits Times*, March 17, 2005.

[41] Nah, "Struggling with (Il)Legality," p. 52.

[42] See Human Rights Watch, *Living in Limbo: Burmese Rohingyas in Malaysia* (August 2000), http://www.hrw.org/en/reports/2000/08/01/malaysiaburma-living-limbo-burmese-rohingyas-malaysia; Asia Watch, *Burma: Rape, Forced Labor and Religious Persecution in Northern Arakan* (May 7, 1992), http://www.burmalibrary.org/docs/Northern_Arakan92.htm; Amnesty International, *Union of Myanmar (Burma): Human rights violations against Muslims in the Rakhine (Arakan) State* (April 30, 1992), http://www.amnesty.org/en/library/info/ASA16/006/1992/en (accessed May 15, 2012).

[43] Equal Rights Trust, *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, January 2010, p. 35, http://www.equalrightstrust.org/ertdocumentbank/ERTMalaysiaReportFinal.pdf (accessed May 15, 2012).

[44] Unmah refers to the community of Muslim believers. Malaysia's Ministry of Foreign Affairs. In "Malaysia's Foreign Policy Overview," http://www.kln.gov.my/web/guest/overview2 (accessed May 15, 2012).

[45] Saravanamuttu, *Malaysia's Foreign Policy,* p. 5.

[46] Nair, *Islam in Malaysian Foreign Policy,* p. 172.

[47] Amarjit Kaur, "International Migration and Governance in Malaysia: Policy and Performance," *UNEAC Asia Papers* No. 22 (2008): pp. 7-8, http://www.une.edu.au/asiacentre/PDF/No22.pdf (accessed May 15, 2012).

[48] Immigration Control Act of 1959/63, Section 6 (3), http://jpt.mohe.gov.my/RUJUKAN/akta/akta%20imigresen.pdf (accessed April 27, 2012).

[49] Immigration Control Act of 1959/63, Section 15.

[50] Organisation for Economic Cooperation and Development, *Migration and the Labour Market in Asia: Recent Trends and Policies* (Paris: OECD, 2002), p. 131.

[51] Kaur, p. 14.

[52] Nah, "Struggling with (Il)Legality," p. 40.
[53] Angeline Loh, "Government's Deception of Undocumented Migrants and Refugees," *Malaysian Insider,* April 14, 2012, http://www.themalaysianinsider.com/mobile/sideviews/article/governments-deception-of-undocumented-migrants-and-refugees-angeline-loh/ (accessed April 26, 2012).
[54] Motion proposed by Charles Hector and Francis Pereira dated 22nd February 2007, unanimously carried out at the The 61st Annual General Meeting of the Malaysian Bar held at the Grand Ballroom, Legend Hotel, Kuala Lumpur, March 17, 2007, Items no. 2-9, http://www.malaysianbar.org.my/malaysian_bars_resolutions/the_61st_annual_general_meeting_of_the_malaysian_bar_held_at_the_grand_ballroom_legend_hotel_kuala_lumpur_17_march_2007.html (accessed April 26, 2012).
[55] "Q&A: We act within the law," *Malaysiakini* (December 2007), http://relawatch.wordpress.com/2007/12/05/interview-with-rela-director-general/#more-20 (accessed May 15, 2012).
[56] Motion by Charles Hector, Item No.10.
[57] Motion by Charles Hector, Item No.11.
[58] International Federation for Human Rights (FIDH) and Suara Rakyat Malaysia (SUARAM), *Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination* (March 2008), p. 12.
[59] "Seeing Red over Men in Blue," *Malay Mail*, March 26, 2012, http://www.mmail.com.my/story/seeing-red-over-men-blue (accessed April 26, 2012).
[60] "Disband Rela, Bar Council urges," *Malay Mail,* April 3, 2012, http://www.malaysianbar.org.my/legal/general_news/disband_rela_bar_council_urges.html (accessed April 26, 2012).
[61] International Federation for Human Rights (FIDH) and Suara Rakyat Malaysia (SUARAM), *Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination* (March 2008), p. 10.
[62] FIDH-SUARAM, *Undocumented Migrants,* p. 10.
[63] Alice Nah, "Freedom and justice: Ending the trials of Irene Fernandez and Nirmala Bonat," *The Malaysia Insider* (December 2, 2008), http://www.themalaysianinsider.com/opinion/article/Freedom-and-justice-Ending-the-trials-of-Irene-Fernandez-and-Nirmala-Bonat/ (accessed May 15, 2012).
[64] "Irene Fernandez acquitted of all charges," *The Malaysia Insider* (November 24, 2008), http://www.themalaysianinsider.com/malaysia/article/Irene-Fernandez-acquitted-of-all-charges/ (accessed May 15, 2012).
[65] See SUARAM's Press Statement, "Pass of the Security Offences Bill (Special Measures) 2012, will cause more travesty of justice and violations of the rights of Malaysian citizens for years to come," April 18, 2012, http://www.suaram.net/?p=2716#more-2716; Tommy Thomas, "Is the Security Offences Bill constitutional?," *The Malaysian Insider,* April 21, 2012, http://www.malaysianbar.org.my/members_opinions_and_comments/is_the_security_offences_bill_constitutional_.html (accessed April 26, 2012).
[66] UNHCR-Malaysia, "UNHCR to start mobile registration in Malaysia's jungle camps,"

UNHCR News & Events (December 10, 2004), http://www.unhcr.org.my/News_Views-@-UNHCR_to_start_mobile_registration_in_Malaysia%E2%80%99s_jungle_camps.aspx (accessed May 15, 2012).

[67] Interviews with NGO workers, Kuala Lumpur, August 11 & 18, 2010.

[68] Conversation with UNHCR staff, Kuala Lumpur, August 25, 2010.

[69] Interview with former UNHCR RSD Officer, Kuala Lumpur, August 6, 2010.

[70] Interview with NGO staff, Petaling Jaya, August 18, 2010.

[71] Equal Rights Trust, *Trapped in a Cycle of Flight,* p. 9.

[72] Equal Rights Trust, *Trapped in a Cycle of Flight,* p. 9.

[73] Nah, "Struggling with (Il)Legality," p. 54.

[74] Interviews with David Thong Lian Cung, Kap Sian Hatlang, and Juliet. Kuala Lumpur, August 9, 18, & 24, 2010.

[75] Article 1, 1951 Convention Relating to the Status of Refugees.

[76] Interviews with former UNHCR RSD Officers, Kuala Lumpur, August 6 & 20, 2010.

[77] Interviews with David Thong Lian Cung, Kap Sian Hatlang, and Juliet. Kuala Lumpur, August 9, 18, & 24, 2010.

[78] Interview with Petra Gimbad, Kuala Lumpur, August 13, 2010.

[79] Interview with David Thong Lian Cung, Kuala Lumpur, August 9, 2010.

[80] Human Rights Commission of Malaysia (SUHAKAM), *Annual Report 2009* (Kuala Lumpur: SUHAKAM, 2009), p. 35.

[81] Interview with former UNHCR RSD Officer, Kuala Lumpur, August 6, 2010.

[82] Interviews with former UNHCR RSD Officer and with current staff, Kuala Lumpur, August 20 & 25, 2010.

[83] Interview with Temme Lee, Petaling Jaya, August 11, 2010.

[84] Interview with NGO worker, Petaling Jaya, August 18, 2010.

[85] Interview with NGO worker, Petaling Jaya, August 11, 2010.

[86] Amnesty International (AI), *Abused and Abandoned: Refugees Denied Rights in Malaysia* (June 2010) p. 10, http://www.amnesty.org/en/library/asset/ASA28/010/2010/en/2791c659-7e4d-4922-87e0-940faf54b92c/asa280102010en.pdf (accessed May 15, 2012).

[87] AI, *Abused and Abandoned,* p. 10.

[88] AI, *Abused and Abandoned,* p. 14.

[89] AI, *Abused and Abandoned,* p. 13.

[90] Interview with NGO worker, Petaling Jaya, August 18, 2010.

[91] Interview with Cynthia Gabriel, Kuala Lumpur, August 21, 2010.

[92] SPF has a blog created by one of the refugees who works as a volunteer for the UNHCR. "Refugee Self Help Projects Malaysia," http://spfunhcr.wordpress.com/2012/02/15/social-protection-fund-key-results-2011/ (accessed April 26, 2012).

[93] Interview with former UNHCR RSD officers and a current UNHCR staff, Kuala Lumpur, August, 6, 20, & 25, 2010.

[94] Interview with NGO worker, Petaling Jaya, August 18, 2010.

[95] Interview with social workers, Kuala Lumpur, August 13, 2010.
[96] Nah, "Struggling with (Il)Legality," p. 36.
[97] Interview with Chin refugee, Kuala Lumpur, August 9, 2010.
[98] Nah, "Struggling with (Il)Legality," p. 37.
[99] Interview with Mohd Hamdan Adnan and D'ato Siva Subramaniam, Kuala Lumpur, August 19 & 25, 2010.
[100] Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Cornell: Cornell University Press, 2011), p. 223.

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