



## **ASYLUM ACCESS MALAYSIA**

### **CONTRIBUTION TO THE LIST OF ISSUES TO BE COMPILED BY THE COMMITTEE ON THE CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST ALL WOMEN (CEDAW)**

#### **REFUGEE AND ASYLUM-SEEKER WOMEN**

**STATE PARTY:**

**MALAYSIA**

Asylum Access Malaysia  
18-B Jalan Bangsar,  
59200 Kuala Lumpur, Malaysia  
(+60) 3 2201 5439

[www.asylumaccess.com](http://www.asylumaccess.com)

## INTRODUCTION

1. This submission is a summary of relevant issues for consideration by the CEDAW Committee in their compilation of a formal List of Issues to be put to the Malaysian Government ahead of their plenary review under CEDAW in March 2018. This report is submitted on behalf of Asylum Access Malaysia.
2. This report is intended for consideration by the CEDAW Committee working group during the pre-session in July 2017.

## OVERVIEW: ASYLUM SEEKER AND REFUGEE WOMEN IN MALAYSIA

3. This report focuses on **refugee and asylum seeker women** in Malaysia.<sup>1</sup> Asylum Access Malaysia welcomes the recommendations of the CEDAW Committee in its Concluding Comments in 2006<sup>2</sup> to the Malaysian government that:
  - a. the Malaysian government adopt laws and regulations relating to the status of asylum seekers and refugees in Malaysia in line with international standards;<sup>3</sup> and
  - b. that the Malaysian government fully integrate a gender-sensitive approach throughout the process of granting refugee and/or asylum seeker status in close cooperation with appropriate international agencies in the field of refugee protection, in particular the Office of the High Commissioner for Refugees.<sup>4</sup>
4. Malaysia has failed to implement any laws or policies which adequately protect the rights of refugee and asylum seeker women in Malaysia. Malaysia has not signed the 1951 Refugee Convention or its 1967 Protocol and does not have a legislative or administrative framework to protect refugees and asylum seekers within its jurisdiction. This makes refugees and asylum seekers vulnerable to arrest, detention and *refoulement*. It also leaves them without adequate access to justice, lawful employment, healthcare and education.
5. Refugee and asylum seeker women in Malaysia face unique additional violations of their rights including particular forms of sexual and gender-based violence (SGBV), discrimination and exploitation.<sup>5</sup>

---

<sup>1</sup> Since refugee status is declaratory and not dependent on adjudication, any person who satisfies the definition under the Convention Relating to the Status of Refugees 1951 ('Refugee Convention') is a refugee. For the purpose of this submission, however, the term 'refugee' will be used to refer to any person whose refugee claim has been recognised by the UN High Commissioner for Refugees (UNHCR). The term 'asylum seeker' will be used to refer to any person seeking refugee status who is yet to be recognised by the UNHCR.

<sup>2</sup> Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia*, 35<sup>th</sup> session, 15 May 2006-2 June 2006, available at [http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING\\_COMMENTS/Malaysia/Malaysia-CO-1-2.pdf](http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/Malaysia/Malaysia-CO-1-2.pdf) ('Concluding Comments 2006')

<sup>3</sup> *ibid* paragraph 45

<sup>4</sup> *ibid*

<sup>5</sup> UNHCR, UN Refugee Agency Malaysia, *Refugee Women in Malaysia*, available at <http://www.unhcr.org.my/refugeeMsia.htm>

6. We acknowledge that there has been some recent effort by the government to improve policies around refugees, including the establishment of a Joint Task Force with UNHCR in December 2016; a pilot program to allow 300 Rohingya UNHCR card-holders to work in the plantation sector in March 2017,<sup>6</sup> and the recently announced plans to use allocations from the Qatar Development Fund to expand areas of health insurance, education and skills training for Rohingya refugees.<sup>7</sup> In April 2017, the government announced that they would be identifying the best method of conducting screening for refugees to verify their status.<sup>8</sup>
7. While these initiatives indicate some progress, in the absence of any laws and enforceable policies on the rights of refugee women to obtain legal status and access healthcare, formal employment and justice, the Malaysian government continues to fail to act upon CEDAW Committee General Recommendation 32<sup>9</sup> which places an onus on state parties to CEDAW to ensure that refugee and asylum seeker women within their effective control or jurisdiction are not exposed to violations of their rights under CEDAW.<sup>10</sup>

## ISSUES AND QUESTIONS FOR CONSIDERATION

### ***Issue 1: Detention and non-refoulement<sup>11</sup> (CEDAW articles 1, 2, 5(a), 12)***

8. In Malaysia's third to fifth combined periodic report to the CEDAW Committee,<sup>12</sup> the government remarked that UNHCR card-holders enjoy freedom of movement within Malaysia.<sup>13</sup> Statements to the same effect have been made in recent Parliamentary debates.<sup>14</sup> However, the absence of laws or enforceable policy against mandatory detention of refugees and asylum seekers in

<sup>6</sup> The Sun Daily, *Pilot project to allow Rohingya UNHCR card holders work legally to begin from March: Zahid*, 2 February 2017, available at <http://www.thesundaily.my/news/2148173> ('The Sun Daily 2 February 2017'); Malaysiakini, *Only 40 Rohingya registered for work under pilot scheme*, 4 April 2017, available at <https://m.malaysiakini.com/news/378003> ('Malaysiakini 4 April 2017')

<sup>7</sup> The Official Portal of the Parliament of Malaysia, House of Representatives, Official Statements – 4 April 2017, available at [http://www.parlimen.gov.my/files/hindex/pdf/DR-04042017%20\(2\).pdf#page=20&zoom=70&search=refugee](http://www.parlimen.gov.my/files/hindex/pdf/DR-04042017%20(2).pdf#page=20&zoom=70&search=refugee) page 15 ('House of Representatives – 4 April 2017')

<sup>8</sup> Astro Awani, *KDN to identify own method of screening refugees - Nur Jazlan*, 22 April 2017, available at <http://english.astroawani.com/malaysia-news/kdn-identify-own-method-screening-refugees-nur-jazlan-140295>

<sup>9</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 14 November 2014, CEDAW/C/GC/32, available at: <http://www.refworld.org/docid/54620fb54.html> ('General Recommendation 32')

<sup>10</sup> *ibid* paragraph 7

<sup>11</sup> *ibid* paragraph 5

<sup>12</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention, Combined third to fifth periodic reports of States parties due in 2012 : Malaysia*, 17 October 2016, CEDAW/C/MYS/3-5, available at: <http://www.refworld.org/docid/5880c92e4.html>

<sup>13</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention, Combined third to fifth periodic reports of States parties due in 2012 : Malaysia, Appendix A: Responses to the CEDAW Committee's Concluding Comments on Malaysia's Initial and Second Periodic Report*, 17 October 2016, CEDAW/C/MYS/3-5, available at:

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT\\_CEDAW\\_ADR\\_MYS\\_25048\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_ADR_MYS_25048_E.pdf) page 20 ('Malaysian government responses to CEDAW Committee's 2006 Concluding Comments')

<sup>14</sup> House of Representatives – 4 April 2017 (n 7) page 15 (translation from Bahasa Melayu): 'Dato' Seri Dr Shahidan bin Kassim: [...] For the period in which UNHCR card-holders remain in Malaysia, they are not denied freedom of movement within Peninsular Malaysia [...]

Malaysia means that there is no legal certainty as to how the government's policy on detention is applied, or the precise period of detention of refugees and asylum seekers.

9. While female UNHCR card-holders usually have limited informal protection from arrest, they continue to be harassed and extorted (including by the police) and even arrested and detained at times.<sup>15</sup> The government continues to detain other refugee and asylum seeking women who are not yet registered with the UNHCR. This is of particular concern given the heightened vulnerability of refugee and asylum seeker women in detention, the long processing time of refugee claims by the UNCHR and the lack of access to UNHCR for many refugee women, including Rohingya refugees.
10. The Malaysian government made commitments to upholding the principle of *non-refoulement* in their Responses to the CEDAW Committee's Concluding Comments on Malaysia's Initial and Second Periodic Report.<sup>16</sup> In recent Parliamentary debates the government explained that UNHCR card-holders would not be sent back to their country of origin in accordance with the principle of *non-refoulement*.<sup>17</sup> However contrary to the government's assertions, refugee communities report *refoulement* of UNHCR card-holders and asylum-seekers from immigration detention centres. These reports included one concerning a woman who was deported after having come to the attention of the government through being admitted at a public hospital for childbirth.<sup>18</sup>
11. Malaysia has failed to consider the particular needs of refugee and asylum seeker women in accordance with CEDAW Articles 1, 2, 5(a) and 12. There is poor sanitation and a lack of adequate food, water and medical care in detention, exposing them to risk of infectious disease and even death.<sup>19</sup> Pregnant and lactating women are denied adequate access to facilities and services to

---

<sup>15</sup> Protection from arrest is provided for in a written directive issued by the Attorney General's Chambers (AGC) in 2005, which is not publically available; International Federation for Human Rights (FIDH) and SUARAM, *Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination*, March 2008, p. 9; Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, 2014, available at <http://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>16</sup> Malaysian government responses to CEDAW Committee's 2006 Concluding Comments (n 13) page 21

<sup>17</sup> House of Representatives – 4 April 2017 (n 7) page 15 (translation from Bahasa Melayu): 'Dato' Seri Dr Shahidan bin Kassim: [...] For the period in which UNHCR card-holders remain in Malaysia [...] they will not be sent back to their country of origin in accordance with the principle of *non-refoulement* except if they return voluntarily or their country of origin achieves peace [...]

<sup>18</sup> AAM has received reports from the Arakan Refugee Relief Centre (ARRC) which evidence *refoulement* of individuals from Myanmar. One report was of a woman registered with ARRC who gave birth in a public hospital and was reported to immigration authorities by hospital staff in April 2017. She was detained in immigration detention centre until June 2017 when she and her newborn child were deported to Myanmar. AAM also received reports from the Kachin Refugee Community (KRC) of approximately 15 individuals deported from immigration detention centres between 2014 and 2016. Reports also indicate that refugee and asylum seeker women have been deported from a range of communities including Kachin, Mon, Shan, Karen and Pakistani Ahmadi communities. Many were deported from immigration detention centres and some were pregnant or had just given birth. See also: UN High Commissioner for Refugees (UNHCR), *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*, March 2013, available at: <http://www.refworld.org/docid/513d9a0e2.html> page 5

<sup>19</sup> The Guardian, *Refugees describe death and despair in Malaysian detention centres: United Nations confirms deaths of 24 people in detentions centres since 2015, 22 of whom were Myanmar nationals, but toll could be much higher*, 16 May 2017, available at [https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals?CMP=tw\\_t\\_a-world\\_b-gdnworld](https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals?CMP=tw_t_a-world_b-gdnworld) ('Guardian 16 May 2017')

meet their specific needs.<sup>20</sup> Moreover, female detainees are subjected to SGBV and other abusive treatment while in custody and detention.<sup>21</sup>

12. Recent high-profile reports confirm that there have been at least two dozen refugees and asylum-seekers who have died in immigration detention centres over the past two years.<sup>22</sup> Due to the lack of adequate data collection and monitoring of the situation of refugee and asylum seeker women in detention, it is unclear whether any women were part of this statistic.

13. **Critical questions on detention and non-refoulement**

**Critical Question 1:** Given the vulnerability of refugee and asylum seeker women to arrest, detention, and even *refoulement*, in spite of the government's representations to the contrary, will the government enact clear laws against mandatory detention of refugees and asylum seekers in order to ensure consistent and fair application of such laws in compliance with CEDAW?

**Critical Question 2:** Where detention of vulnerable refugees and asylum seekers (including refugee and asylum seeker women) is unavoidable, will the government, in accordance with CEDAW articles 1, 2, 5(a) and 12 and General Recommendation 32

- a. ensure that adequate facilities and services which meet their specific needs are provided, including by ensuring that there is effective screening for vulnerabilities among detainees and that staff at detention centres are provided with robust training relating to the specific needs and rights of women; and
- b. take active measures to eradicate SGBV and other abuse of refugee and asylum seeker women in detention, including by investigating allegations of such abuse and collecting and making publicly available gender-disaggregated data on detained female refugees and asylum-seekers and their treatment while in detention?

---

<sup>20</sup> National Human Rights Commission of Malaysia (SUHAKAM), *Roundtable on Alternatives to Immigration Detention*, available at <http://www.suhakam.org.my/wp-content/uploads/2013/12/Report-on-Roundtable-on-ATD-Malaysia.pdf>; General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/106/38/PDF/G1110638.pdf?OpenElement>; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras; Addendum; Visit to Malaysia (19 November-2 November 2014)

<sup>21</sup> Erica Holzaepfel and Diane Paul through Social Impact, Inc on behalf of the United States Department of State, *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*, (2013) available at: [http://www.ecoi.net/file\\_upload/1226\\_1441694758\\_233056.pdf](http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf); Jonathan Vit, *Rohingya Girls for Sale: Malaysia's Forced Marriage Problem*, (2016), available at: [https://www.vice.com/en\\_id/article/rohingya-girls-for-sale-malysias-forced-marriage-problem](https://www.vice.com/en_id/article/rohingya-girls-for-sale-malysias-forced-marriage-problem)

<sup>22</sup> Guardian 16 May 2017 (n 19)

**Critical Question 3:** Given that current Malaysian law provides no statutory basis for assessing the likelihood of harm an individual faces upon removal from Malaysia to a third country; and further given that the removal of refugees and asylum seekers (including those who have not yet registered with the UNHCR) has resulted in breaches of the international obligation of *non-refoulement*, what measures will Malaysia put in place to ensure individualized assessments pertaining to the risk an individual faces upon removal to a third country before such individuals are removed?

**Issue 2: No Formal Access to Employment (CEDAW Article 11)**

14. Refugees and asylum seekers in Malaysia have no legal permission to work, forcing refugee and asylum seeker women to seek sources of income from the informal labour market. This exacerbates their vulnerabilities as they face unacceptable risks when travelling to and from work, and within the workplace.<sup>23</sup>
15. For women who are unable to access jobs within the informal sector, lack of income increases the risk of exploitation, contributes to marginalisation, and can lead to negative coping mechanisms, such as survival sex or early marriage.<sup>24</sup>
16. In March 2017, the government began a pilot program to allow 300 Rohingya UNHCR card-holders to work in the plantation sector.<sup>25</sup> However, only refugee men are allowed to be part of this program. Pursuant to CEDAW Article 11, failure to take appropriate measures to eliminate discrimination against women in the field of employment could constitute discrimination. General Recommendation 32 further provides that refugee and asylum seeker women should be offered sources of livelihood and employment opportunities.<sup>26</sup>
17. **Critical question on formal access to employment**

**Critical Question 4:** Given its obligations under CEDAW Article 11 and General Recommendation 32, and the government's recent initiative to provide a subsection of refugees legal permission to work, will the government expand the right to access formal employment to all refugees, in particular women, in order to reduce the levels of vulnerability and risks of exploitation refugee and asylum seeker women face?

---

<sup>23</sup> UNHCR, *Age, Gender and Diversity Accountability Report 2014*, available at: [http://www.ecoi.net/file\\_upload/1930\\_1436957479\\_55a61f794.pdf](http://www.ecoi.net/file_upload/1930_1436957479_55a61f794.pdf) and <http://www.unhcr.org/548180b69.pdf>

<sup>24</sup> *ibid*

<sup>25</sup> *The Sun Daily*, 2 February 2017 (n 6); *Malaysiakini* 4 April 2017 (n 6)

<sup>26</sup> General Recommendation 32 (n 9) paragraph 33

### **Issue 3: Lack of Access to Affordable and Appropriate Healthcare (CEDAW Article 12)**

18. In accordance with CEDAW Article 12 and General Recommendation 32, the Malaysian government is responsible for ensuring that refugee and asylum seeker women have adequate access to healthcare.<sup>27</sup>
19. Refugee and asylum seeker women face major practical obstacles to accessing healthcare facilities, including family planning, maternal and child healthcare services. While there are no legal barriers to accessing healthcare,<sup>28</sup> refugees and asylum seekers are subject to the cost of medical treatment for foreign nationals which is too high for the majority of them.<sup>29</sup> Other barriers include fears of arrest and detention when travelling to treatment centres due to the lack of legal status, and language barriers.<sup>30</sup>
20. Access to affordable and professional healthcare is critically important for asylum seeker and refugee women and girls who may face specific risks including pregnancy complications, pregnancy-related death, and infant disease or death.<sup>31</sup> There is limited disaggregated data available on the types and prevalence of access to treatment by asylum seeker and refugee women in Malaysia.
21. **Critical question on access to appropriate and affordable healthcare**

**Critical Question 5:** Given its recent public representations on assisting UNHCR card-holders to address issues pertaining to their health and welfare through the Qatar Development Fund, what concrete measures will the Government take to ensure that all refugee and asylum seeker women are able to safely access affordable public health care in compliance with its obligations under CEDAW, in particular critically important family planning and reproductive health care services, especially in situations of emergency?

---

<sup>27</sup> *ibid*

<sup>28</sup> Malaysian government responses to CEDAW Committee's 2006 Concluding Comments (n 13) page 20; House of Representatives – 4 April 2017 (n 7) pages 15-16

<sup>29</sup> Refugees and asylum seekers are charged at the full foreign rate, which was increased in October 2016, with 50% discounts available to UNHCR card-holders. Even with a discount, the majority of refugees and asylum seekers are unable to afford healthcare services.

<sup>30</sup> UN General Assembly Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, Addendum, Visit to Malaysia, (19 November-20 November 2014)*, A/HRC/29/33/Add.1, 1 May 2015 available at: <http://www.refworld.org/pdfid/5576e2224.pdf>; Migration Working Group, *Joint UPR Submission – Malaysia* (2013), available at: <http://wao.org.my/file/file/Migration%20Working%20Group%20Joint%20UPR%202013%20Submission.pdf>; UNHCR, *Health Refugees and Asylum Seekers (Urban)* (2016), available at: <http://reporting.unhcr.org/node/10048>

<sup>31</sup> Women's Refugee Commission, *Livelihoods Facts and Figures*, available at: <https://www.womensrefugeecommission.org/empower/resources/practitioners-forum/facts-and-figures>