

Parliamentary Briefing on Legal Framework for Refugees in Malaysia

Parliament of Malaysia, Kuala Lumpur
24 October 2019

SUMMARY REPORT

Background

The Parliamentary Briefing on Legal Framework for Refugees in Malaysia (“the Briefing”) was jointly organized by the Asia Pacific Refugee Rights Network (APRRN) and ASEAN Parliamentarians for Human Rights (APHR), in collaboration with the office of the Speaker of the House of Representatives. The Briefing was organized to provide an overview of the situation for refugees in Malaysia, provide examples of legal framework and policies for refugees in other countries in the region, and engage members of Parliament to work towards the development of a legal framework for refugee protection in Malaysia.

The one-hour briefing, held in Bangunan Parlimen, Kuala Lumpur, was attended by 88 persons, including Tan Sri Dato' Mohamad Ariff bin Md Yusof, Speaker of House of Representatives; YB Datuk Mohd Rashid Hasnon, Deputy Speaker of the Dewan Rakyat; Tan Sri Dato Sri Syed Hamid Albar, former Minister of Home Affairs, Foreign Affairs, Defence and Justice and former special envoy of the OIC to Myanmar; Kasit Promiya, Former Foreign Minister of Thailand and Board Member of APHR; 20 Members of Parliament; UNHCR; representatives from the Turkish Embassy of Malaysia and Turkish Red Crescent; refugee community representatives; and civil society organisations. Lilianne Fan, the Chair of the Rohingya Working Group in APRRN, and International Director for Geutanyoe Foundation, acted as the emcee for the event.

This report is a summary of the speeches, presentations and discussions during the Briefing.

Welcoming Speech

Speaker: H.E. Tan Sri Dato' Mohamad Ariff bin Md Yusof, Speaker of House of Representatives

The welcome speech by the honourable Speaker of the House of Representatives focused on three key areas: i) a recognition of Malaysia's historical responses to refugees in the country; ii) the shortfalls of the current legal framework; and iii) the direction envisioned for Malaysia's approach to refugees.

The Speaker emphasized that the current humanitarian framework used by Malaysia is insufficient to comprehensively address the numerous needs and protection concerns faced by refugees and asylum seekers in Malaysia. The use of the Immigration Act as the overarching legal framework meant that refugees were subjected to arrest and detention, denied access to legal work and unable to access adequate basic education. The Briefing therefore seen as a positive step in collaborating, debating and discussing critical and holistic domestic policies, even as Malaysia worked towards ratifying the 1951 Refugee Convention.

Keynote Speech: Importance of a Refugee Policy in Malaysia

Speaker: Tan Sri Dato' Seri Syed Hamid Albar, Former Minister for Home Affairs, Foreign Affairs, Defense and Justice

The keynote speech by Tan Sri Dato' Seri Syed Hamid Albar focused on four key areas: i) a reminder that refugees are victims of the collective failures of the international community,

and should not be treated as 'problems'; ii) a reflection on the past and current ad-hoc policies and humanitarian actions to address refugee concerns in Malaysia; iii) the potential benefits to Malaysia if refugees are legally recognised; and iv) the need for a multi-stakeholder approach in Malaysia and across borders in the process of developing comprehensive refugee legislation.

His comments on the insufficiency of an ad hoc, 'humanitarian approach' and the consequences on refugees accessing rights when the Immigration Act was used against them echoed the points made by the Speaker. Additionally, he emphasized the importance of foreign policy that addressed the root causes of conflict and spoke about the benefits to Malaysia through increased tax revenues and job creation for Malaysians should refugees be legally recognised.

Experiences of Refugees in Malaysia

1st Speaker: Mohammad Omar AlKhammaash, Syrian refugee, representative from Refugee Coalition of Malaysia

Mohammad Omar AlKhammaash, a 21-year-old refugee from Syria, spoke about his own experiences as a young person seeking asylum in Malaysia. He shared how mentions of Syria now evoke traumatic images, how he has been denied access to education for three years because of his refugee status, and the uncertainty and resultant mental pressures he faces which have often made him feel that he should "return to Syria and just be forced to join the army". His speech highlighted several challenges faced by the learning centres for refugee children in Malaysia, including a lack of quality curriculum, unregistered schools, lack of training for and certification of teachers; high cost of materials, exams fees, and international student fees for universities.

He appealed to elected officials to ensure refugee children were granted access to education, and reminded participants that doing so was not only in line with the government's 'Zero Reject Policy', but would also address social concerns and would benefit not only refugees but Malaysian society too.

2nd Speaker: Hasnah binti Hussin, Rohingya refugee, representative from Refugee Coalition of Malaysia and Tenaganita

Giving her speech in Malay, Hasnah binti Hussin spoke about being born to Rohingya parents in Malaysia, growing up here and feeling a deep connection to the country. Her speech highlighted the realities of refugees who are born in and only know Malaysia to be home. She spoke about the constant fear of arrest and immigration detention she and refugees face every time they leave their homes, and she highlighted in particular stories of children and teenagers from her community who have been detained. Hasnah also focused on the risks faced by the majority of refugees in Malaysia who have to work to sustain themselves and their families despite the lack of legal work rights.

Her appeal was for the voices of refugees to be raised in Parliament, for an end to the arrest and detention of refugees, and for refugees to be granted the right to work legally.

Development of Policies and Legal Framework in Other Countries

1st speaker: Kasit Promiya, Former Foreign Minister of Thailand and Board Member of ASEAN Parliamentarian for Human Rights (APHR)

The two speakers in this session provided input on how their countries have addressed their significant refugee populations through domestic legislation and policies.

Kasit Promiya's speech covered three key areas: i) a brief overview of the current situation in Thailand; ii) Thailand's track record on addressing refugee issues; and iii) the necessary next steps for Thailand, Malaysia and ASEAN in refugee protection.

Despite not being a signatory to the 1951 Refugee Convention, Thailand has a history of successfully responding to refugees from India, China, Vietnam, Cambodia, Laos, Pakistan and North Korea, through resettlement to third countries and integration into Thai society. Currently, Thailand has three broad categories of refugees: 150,000 refugees from Burma living in nine camps along the Thai-Burma border; approximately 8000 urban refugees from Somalia, Pakistan and the Middle East who live in and around Bangkok; and the 30,000-50,000 Rohingya refugees who live in various parts of Thailand. Kasit emphasized that strong political will was needed for Myanmar and Thailand to meaningfully address the root causes of conflict, which would enable safe return of refugees to Myanmar. In the interim, he proposed that refugees from Myanmar be temporarily integrated into the Thai workforce.

As highlighted by previous speakers, he also spoke about past collaborative efforts by Thailand, Malaysia, "friendly-countries, donor countries, and UNHCR" to develop and act on a comprehensive action plan for more than a million Vietnamese refugees. This was a reminder that the actions required to address refugee protection and meaningfully respond to conflict were not impossibilities, given our current capacity and historical ability to do so. Strong political attention and will from members of Parliament and political parties, however, was vital in achieving these necessary responses. He urged the development of cross-border civil society networks to work on refugee issues, and maintain pressure on elected officials.

Finally, he assessed that the use of immigration laws by Thailand and Malaysia as the dominant framework to respond to refugees was illogical, and that it was "inhumane to ask for any kind of documentation...(from refugees who are) victimised, and have run away". Furthermore, the system of detaining refugees, including children, for 'illegal entry' was "inhumane". Kasit therefore said it was imperative for Thailand and Malaysia to develop national refugee protection laws, and to take leadership on an ASEAN Master Plan on refugee protection in the region.

2nd Speaker: Nazli Merve Erkan, Protection Team Leader, Migration Services Department, Turkish Red Crescent

Nazli Merve Erkan, a representative from the Turkish Red Crescent, provided an overview of Turkey's national asylum procedures, and the rights and obligations of refugees in Turkey. There are currently 3.6 million refugees and 350,000 persons of concern in Turkey. Turkey is party to the 1951 Refugee Convention and 1967 Additional Protocol, with 'geographical limitations', meaning only refugees from Europe will receive refugee status, while others will be resettled to a third country. Under Turkey's national system, there are four main statuses

through which refugees are categorised: Refugee, Conditional Refugee, Subsidiary Protection and Temporary Protection.

Refugees in Turkey are granted access to free public healthcare, access to education, right to work, access to social services, social assistance and free legal aid. There are systems of support in place to address language barriers in accessing health care, challenges to integrating into local school systems, while free vocational and language classes are provided for all refugee children and adults.

While persons who are seen as a threat to public security or who are in breach of immigration rules can be detained, Turkey prohibits the detention of children. Instead, children whose parents are detained are placed in institutional care.

In addition to the rights and services that refugees can access, refugees also have obligations to the State. These are primarily administrative in nature, such as keeping up-to-date records of marriages, births, licenses and property, and providing legal documents as required.

Finally, Nazli concluded by sharing three possible durable solutions for refugees in Turkey: firstly, 'voluntary return' if refugees are able to return safely and in dignity; secondly, 'social integration' through citizenship or long-term resident status for refugees who can integrate socially and economically into Turkish society; and finally 'resettlement to a third country'.

Discussion: Role and Actions of Parliamentarians in Developing A Domestic Legal Framework for Refugees

Moderators: YB Maria Chin Abdullah, Member of Parliament for Petaling Jaya, and Lillianne Fan (APRRN and Geutanyoe Foundation)

The 16-minute discussion, moderated by YB Maria Chin Abdullah, MP for Petaling Jaya and Lillianne Fan was an opportunity for parliamentarians in attendance to share experiences, challenges and suggestions for the next steps needed to develop a domestic legal framework for refugees. The following is a summary of the interventions from the floor by members of parliament YB Ahmad Tarmizi bin Sulaiman (Sik), YB Ahmad Fahmi bin Mohamed Fadzil (Lembah Pantai), YB Hajah Natrah Ismail (Sekinjang) and YB Vivian Wong Shir Yee (Sandakan).

The parliamentarians highlighted several areas of refugee rights that were of concern to them. This included the right of refugees to legal work, to accessing education, and the right to affordable health care. Concerns around immigration detention, especially the detention of children, and the particular vulnerabilities faced by children and youth (beyond access to education) were also expressed. As discussed by previous speakers, the MPs also addressed the need for a regional and international response to the root causes of the conflict.

Another theme that emerged was for a cross-border collaborative effort between governments and civil society, the need to be emboldened and draw confidence from Malaysia's history in successfully responding to refugee crises, and to learn from the positive strategies and legislative actions undertaken by other countries. Several MPs stated that Malaysia "will not be impoverished" but stood to gain from providing protection to refugees.

MPs also said that the complexities of the refugee situation and tensions between Malaysians and refugees in particular communities required sensitive, tactful and clear strategies to address these obstacles and issues. This would require a clear plan of action on the steps that needed to be taken to resolve ongoing problems, and a projection of future concerns and how they will be mitigated and resolved.

Apart from the legislative matters that need to be worked on, there was a call for efforts and spaces to address misunderstandings, the lack of understanding and misperceptions around refugee issues, among both elected officials and the broader public.

As refugee protection is a multi-dimensional issue that requires the involvement of various ministries, a proposed next step was for the formation of a Committee, Caucus or an All Party Parliamentarians Group (APPG) on refugees.

Reflecting on the Briefing, YB Maria Chin Abdullah stated that whether Malaysia was a signatory to the 1951 Refugee Convention or not, the reality was that refugees were already in Malaysia. As such a national solution and a collective regional and international strategy needed to be worked on simultaneously. A call to action by parliamentarians was facilitated, resulting in the following parliamentarians volunteering to continue the discussion on the formation of a Caucus or an APPG on refugees:

1. YB Chan Ming Kai – Alor Setar – P009 (PKR)
2. YB Ahmad Tarmizi bin Sulaiman – Sik, Kedah – P013 (PAS)
3. YB Nor Azrina binti Surip – Merbok, Kedah – P014 (PKR)
4. YB Hajah Natrah Ismail – Sekinjang, Johor – P141 (PKR)
5. YB Ahmad Fahmi bin Mohamed Fadzil – Lembah Pantai, Kuala Lumpur – P121 (PKR)
6. YB Hassan bin Abdul Karim – Pasir Gudang, Johor – P159 (PKR)
7. YB Vivian Wong Shir Yee – Sandakan, Sabah – P186 (DAP)



Group photo of speakers and Members of Parliament at the close of the Briefing

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