

**Universal Periodic Review of Malaysia  
45th Session  
January - February 2024**

**Joint submission by:**

**North South Initiative**

North South Initiative (NSI) is a cross-sector-based consortium situated in Malaysia to help bridge solidarity and equality gaps between the North and South in terms of human rights and social justice.

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## Executive Summary

1. This report details numerous human rights violations experienced by non-citizens, migrants, and refugees in Malaysia, with particular reference to the following.
2. **Non-recognition of refugee status:** Despite repeated recommendations, Malaysia is still not a party to the UN Refugee Convention and fails to recognise refugee status, conflating refugees with undocumented migrants and threatening carceral measures against them. Malaysian authorities in September 2022 announced their intention to shut down UNHCR and replace it with state mechanisms, which raises troubling questions given the xenophobic nature of state messaging and policies towards refugees and migrants thus far.
3. **Right to family life:** Numerous categories of migrants are denied the right to family life in Malaysia. Many types of foreign-registered marriages are not recognised by the state and as such cannot access migration rights. Foreigners married to Malaysians are vulnerable to abuse from the immigration authorities, putting their families at risk of separation. Malaysian women are not permitted to transmit their nationality to foreign spouses, or to children born overseas to foreign spouses.
4. **Right to work:** Refugees are not permitted to work in Malaysia in any capacity, which is gravely detrimental to their ability to survive and access housing, healthcare, food, and education. Migrants in Malaysia are vulnerable to labour exploitation and poor working conditions. Migrant domestic workers are bound to their employers' households and are particularly vulnerable, with nearly a third reporting forced labour in a 2023 ILO study. Many employers also confiscate workers' passports and manage renewal of their work permits, rendering workers captive to them – if they flee, they instantly become at risk of immigration detention. International students are not allowed to work in Malaysia unless they already have three years of paid work experience in the field of their degree, which is unrealistic for fresh graduates.
5. **Right to education:** Non-citizens, including refugees, do not have access to free education. Even when communities manage to provide education themselves through self-organised learning centres, these can be precarious and subject to immigration raids and/or evictions. Universities are hesitant to accept students who are refugees, which is aggravated by reported warnings from the immigration department to deter universities from accepting refugee students.
6. **Right to health:** Non-citizens pay significantly higher costs than Malaysians for healthcare. Even the 50% discount made available to UNHCR card holders fails to sufficiently alleviate the prohibitive costs given that they are not allowed to earn an income or even hold bank accounts. Affording surgery is almost impossible. Access to much-needed mental health services is severely limited.
7. **Trafficking:** Anti-trafficking legislation is weaponised against vulnerable migrants. Entertainment venues and massage parlours are targeted in violent raids framed as 'anti-trafficking measures'. Foreign victims of these raids, including those who have been trafficked, often face detention and deportation as a result. Undocumented foreign trafficking victims have a considerably lower chance of obtaining protection orders compared with foreign victims who have valid immigration papers. Trafficking victims are detained in 'shelters' which deny them freedom of movement and communication with the outside world.
8. **Right to public participation:** Even non-citizens' right to public life is limited. Non-Malaysian citizens are prohibited from organising or taking part in peaceful assemblies and are subject to a hefty fine if they are in violation of this policy. Freedom of expression is limited through

draconian use of Section 233 of the Communications and Multimedia Act, which has been used to prosecute human rights defenders for highlighting abuse of migrants and refugees by the authorities. Coordinated online hate campaigns have been deployed to expose private details and threaten violence against migrants, refugees, and their defenders.

## Introduction

9. Non-citizens in Malaysia face frequent discrimination, often perpetuated by state policies, and hate speech, including doxing and incitements to violence, frequently encouraged by state messaging.<sup>1</sup> No matter their immigration or economic status, they face considerable restrictions in what they are permitted to do. This report aims to outline multiple sites of discrimination against people marginalised by borders.
10. Migrants and refugees in Malaysia are regularly subjected to xenophobic scapegoating and attacks; migrants (particularly domestic workers) are at risk of exploitation and forced labour conditions at work, as they are legally tied to their employers; trafficking victims face additional restrictions to their freedoms; non-citizens do not have the constitutional right to peaceful assembly or access to free education; and non-citizens face additional costs to access the same healthcare services. These issues as well as others are discussed below.
11. Access to everyday goods and services in Malaysia is very strictly mediated through parameters of citizenship and bureaucracy. An identity card or passport is required to access services ranging from buying a SIM card to receiving healthcare. Assistance denied to non-citizens has in recent times included Malaysia's COVID-19 relief package and cash provided to victims of Malaysia's increasingly regular floods.
12. Whilst Malaysia often claims in its national reporting to international human rights bodies that it treats all people equally regardless of nationality or socioeconomic status, this report will highlight that this is not the case, particularly as relates to the rights of migrants and refugees.
13. Immigration detention in Malaysia is an area of great concern, having been connected for decades with human rights violations on a large scale. We urge readers to see the joint submission from the Global Detention Project (GDP) and Asia Pacific Refugee Rights Network (APRRN) for more detail on this.
14. Although in its previous UPR cycle Malaysia accepted the recommendation to speed up the relevant discussions,<sup>2</sup> it has yet to ratify the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also has not ratified the Domestic Workers Convention (ILO Convention 189) or the Violence and Harassment Convention (ILO Convention 190).

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<sup>1</sup> A 2023 report by the Centre for Independent Journalism Malaysia found that posts relating to migrants and refugees generated the highest number of incitements to violence among the topics surveyed. Posts by the Immigration Department which encouraged the public to report undocumented migrants and refugees resulted in doxing and explicit calls for physical harm. See Centre for Independent Journalism Malaysia, [Social Media Monitoring of Malaysia's 15th General Elections](#), March 2023.

<sup>2</sup> 151.9 (Turkey)

## Legal and policy context

15. Migrant workers in Malaysia are officially divided into 'expatriates' and 'foreign workers'. Although all of these terms technically mean the same thing, 'expatriate' is used to refer to white-collar workers, and 'foreign workers' to blue-collar workers.
16. Blue-collar migrant workers may only come from a list of 15 Global South countries, and are further restricted by industry sector, gender and age.<sup>3</sup> They may work in Malaysia for a maximum of ten years after which they are to be 'deported' (sic).<sup>4</sup> They typically have low incomes and do not enjoy the right to family life, as holders of the Visit Pass (Temporary Employment) which expressly prohibits accompaniment by family members and marriage to local or foreign citizens. They are particularly vulnerable to labour exploitation and abuse. They are often hired by corporations via lucrative recruitment programmes, whereby prospective workers must pay a hefty recruitment fee (ranging from around 1,200 to 5,000 USD, depending on nationality) to local brokers in their country of origin before migrating.<sup>5</sup> Upon arrival, they face poor working conditions and accommodation, their passports may be confiscated, and they may even be redirected to different employers or industry sectors. Recently many cases have emerged in the news of companies exploiting this recruitment fee structure to make fraudulent job offers to migrants, who were left stranded with no job on arrival.<sup>6</sup>
17. White-collar migrant workers typically enjoy a medium to high income and have the right to move to Malaysia with their spouse, child(ren), and/or domestic worker (officially referred to as 'maid'). There is a minimum income threshold for 'expatriates', which is a double-edged sword: smaller businesses and employers in less lucrative sectors (for example, the arts and non-profit sectors) may not qualify to hire them. As a result, migrants with careers in these sectors have limited opportunities to live and work in Malaysia, while multinational corporations are most likely to employ 'expatriates'.
18. Both categories of migrant workers are tied to their employers. They are forbidden to take on additional jobs, to change their employer without securing the permission of their current one (as well as the permission of the immigration department), or to work for themselves. Those who have been subjected to a change in circumstances by recruitment agents are vulnerable to police extortion, immigration detention and deportation.
19. Self-employment is in general only possible for those who can afford to set up a business with a high amount of capital. Malaysia's new 'digital nomad' scheme is an exception to this, but is restricted to IT-related work and does not offer a long-term future in the country.
20. Migrant workers wishing to permanently stay in Malaysia are unlikely to meet the high income threshold required,<sup>7</sup> and if they manage to work consistently in Malaysia until they retire, they

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<sup>3</sup> Immigration Department of Malaysia, '[Foreign worker](#)', 2021. Compare with Expatriate Services Division, '[Employment Pass \(EP\)](#)', 2023.

<sup>4</sup> Immigration Department of Malaysia, op. cit.

<sup>5</sup> Earthworm, *Insights Into Recruitment Costs and Practices Amongst Small-Medium Sized Companies In The Palm Oil Industry In Peninsular Malaysia*, 2019; Business and Human Rights Resource Centre, '[The US is taking action on forced labour in Malaysia's rubber glove industry. Will the EU follow suit?](#)', 2 October 2019

<sup>6</sup> Kamran Siddiqui, '[Fraudulent job offers leave migrant workers stranded in Malaysia](#)', *The Business Standard*, 17 April 2023

<sup>7</sup> To be eligible for permanent residency in Malaysia, one needs to be an investor (2 million USD), a 'World Class' Expert or sponsored professional recommended by a Malaysian agency, or the spouse of a Malaysian citizen. Another route is through the 'points system', which again rewards significant wealth at the expense of other qualities.

will then be forced to leave.<sup>8</sup> These restrictions favour large corporations and 'high net worth individuals', and discourage the integration of migrants into Malaysian society.

## Non-recognition of refugee status

21. Despite noting recommendations in each successive UPR cycle on ratification of the 1951 UN Refugee Convention and the 1967 Protocol Relating to the Status of Refugees,<sup>9</sup> Malaysia is not yet a party to either, has made no moves to rectify this, and makes no legal distinction between refugees and undocumented migrants. UNHCR registration provides limited protection to refugees against arbitrary arrest, detention and refoulement, but many refugees report that authorities nonetheless threaten them and demand bribes. As UNHCR registration can itself take years, many refugees meanwhile are at great risk and are afraid to go out. The dominant narrative is that Malaysia has graciously allowed refugees to exist within its borders; government representatives have signalled or directly stated that refugees should show gratitude by not complaining.
22. The Tracking Refugees Information System (TRIS) is a surveillance tracking system developed by the Malaysian government in 2017. TRIS aims to control the movement of refugees in the country and obtain very sensitive personal and biometric data from them. TRIS is handled by a private company called Barisan Mahamega Sdn Bhd, which is led by a former head of Special Branch, the intelligence division of the Malaysian police. The company charges refugees RM 500 (115 USD) for its identity card known as the MyRC card. The TRIS website positions the system as counteracting refugees' 'risk and threat to the citizens of Malaysia', claiming that they 'give the bad impact on the Government' (sic).<sup>10</sup> It does not guarantee their protection from immigration detention, nor does it offer any benefits such as the right to work or access to education and healthcare, although it claims that by facilitating identity verification it will reduce their risk of being arrested and detained, and says it is 'in the process' of working with the government to allow MyRC card holders to apply for temporary work permits.
23. In September 2022, the government announced intentions to shut down UNHCR Malaysia and take over the management of refugees in the country, claiming that the organisation's presence attracted refugees to Malaysia while relocation rates have been low. As a non-signatory to the UN Refugee Convention, and with a track record of promoting xenophobia and anti-refugee sentiments, the prospect of Malaysia 'managing' refugees 'in-house' is alarming. Despite the considerable limitations of UNHCR's assistance and influence, to remove it altogether would further exacerbate the already high vulnerability of refugees.
24. Pushbacks at sea are not unusual, and if boats are permitted to land, those on board may be detained immediately. During COVID-19 lockdowns, Rohingya asylum seekers travelling by boat in search of safety were escorted out of Malaysian waters, which was claimed to be a COVID-19 safety measure.<sup>11</sup> This resulted in at least 60 deaths while a further 396 were found starving on board one boat.
25. LGBTI refugees in Malaysia often face homophobic and transphobic threats and violence from other refugees, while being stranded in a country which criminalises and discriminates against

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<sup>8</sup> Ayman Falak Medina, 'Employment Permits in Malaysia', *ASEAN Briefing*, 20 March 2023

<sup>9</sup> See for example 146.2 (New Zealand), 146.8 (Czech Republic, France), 146.18 (Djibouti), 146.28 (United States of America), 151.4 (France), 151.41 (Spain), 151.42 (Canada)

<sup>10</sup> Tris MyRC, 'About Us', Barisan Mahamega Sdn Bhd, 2020

<sup>11</sup> Amnesty International, '[COVID-19 no excuse to sacrifice Rohingya lives at sea](#)', 17 April 2020

LGBTI people in general. These refugees have extremely limited avenues to seek help and generally do not risk approaching the police for fear of further victimisation.

## Xenophobia and restrictions on the rights of migrants and refugees

26. Xenophobic scapegoating of migrants and refugees has been regularly encouraged by government officials and agencies. For example, the immigration department in 2021 published a poster on its Facebook page which read 'Ethnic Rohingya migrants, your arrival is unwelcome'.<sup>12</sup> Migrants and refugees, along with citizens who support their rights, risk becoming targets of coordinated online hate campaigns which include doxing and calls for physical harm.<sup>13</sup> A popular tactic is to report them to the police and/or the immigration department.
27. Following COVID-19 lockdowns, the government imposed a requirement that migrant workers - but not Malaysian citizens - must be screened and tested before returning to work.<sup>14</sup> Similar segregation was practised when foreigners were prohibited from visiting mosques post-lockdown. Despite Malaysia's acceptance in the previous UPR cycle of a recommendation to increase efforts for social inclusion of migrant workers and integration with the local community,<sup>15</sup> such measures have a regressive effect.
28. The rise in xenophobia has included attacks on UNHCR by the government. For example, in June 2021, the then home minister requested UNHCR to provide a list of refugees in the country for vaccination purposes. When UNHCR indicated its willingness to do this so long as assurance was given that the listed refugees would not be arrested, he publicly criticised the agency for being 'not sincere' due to giving conditions.<sup>16</sup> In September 2022, the director general of the national security council called for UNHCR to be shut down, promoting the narrative that the country was being disrespected by the agency's 'foreign interference'.<sup>17</sup>

## Right to family life

29. Relationships between Malaysians and non-citizens face significant challenges due to limitations on their recognition, limitations on rights and documentation provided to transnational spouses, and long processing periods.
30. The only relationships recognised by the authorities are legally registered marriages, but numerous types of marriage registered legally overseas are excluded. These include same-sex marriages, marriages between foreign women and Malaysian transgender men,

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<sup>12</sup> Emily Fishbein and Jaw Tu Hkawng, '[Fear of arrest among undocumented risks Malaysia vaccine push](#)', *Al Jazeera*, 6 August 2021

<sup>13</sup> See Centre for Independent Journalism Malaysia, op. cit.

<sup>14</sup> Charles Hector and Adrian Pereira on behalf of 39 organisations, '[End discrimination against foreigners and migrants in COVID-19 responses](#)', *Malaysiakini*, 30 June 2020

<sup>15</sup> 151.265 (Myanmar)

<sup>16</sup> Audrey Dermawan, '[Hamzah to UNHCR: Where is your sincerity?](#)', *New Straits Times*, 15 June 2021

<sup>17</sup> *Free Malaysia Today*, '[Shut down UNHCR office in Malaysia, says security DG](#)', 6 September 2022

marriages between foreign men and Malaysian transgender women,<sup>18</sup> and marriages between foreign non-Muslims and Malaysian Muslims. Lack of legal recognition blocks spouses who fall outside of the prescribed parameters not only from citizenship, but also from spousal visas and permanent residence, forcing couples to live outside the country.

31. Foreigners married to Malaysians are vulnerable to abuse from the immigration authorities, putting their families at risk of separation. In a 2021 case, the Nigerian husband of a Malaysian woman, living in the country on a spousal visa, was arrested for driving under the influence of alcohol. Although he paid a fine and served one day in prison, as would be the case for a Malaysian citizen, his spousal visa was then cancelled and he was sent to immigration detention. His wife was ordered to make arrangements for his deportation.<sup>19</sup> Following an appeal, the High Court found that the State acted unlawfully. His lawyers noted that many other foreigners appeared to be in immigration detention under similar circumstances but were largely unrepresented and unaware of their rights.<sup>20</sup>
32. Marriages between Malaysian permanent residents and non-citizens are also vulnerable. For example, following the death of a Malaysian citizen, a foreign widow may remain in the country; but the same right is not afforded to foreign widows of Malaysian permanent residents.
33. Malaysian women are currently not permitted to transmit their nationality to their foreign spouses and to their children born overseas to foreign fathers.

## Right to work for migrants and refugees

34. In its previous UPR cycle, Malaysia accepted a recommendation to intensify measures to improve working conditions for migrant workers.<sup>21</sup> However, in practice, migrant workers remain at significant risk of exploitation and forced labour conditions, including through being legally tied to their employers.
35. Domestic workers are particularly vulnerable as they are required to live in their employers' households, where rights violations may include insufficient food, squalid or cramped accommodation, long hours of work without leave or reasonable compensation, deprivation of contact with their families, restrictions on leaving the home, and physical, sexual and/or psychological abuse. In a 2023 ILO study, 29% of migrant domestic workers surveyed in Malaysia reported conditions that indicated forced labour.<sup>22</sup>
36. The state victimises migrant workers who flee abusive employment situations, imprisoning them in immigration detention centres for breaching the conditions of their work permit. Merely being without a passport is considered grounds for detention, although many employers hold on to migrant workers' passports, and the authorities themselves commonly hold their passports during the visa renewal process. If an employer fails to renew a worker's permit or ensure that the job performed matches the job on paper, it is in practice the worker who is detained and punished. Migrant workers who flee abusive employers automatically become 'illegal' and also at risk of detention.

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<sup>18</sup> Transgender citizens of Malaysia are not in practice permitted to change the gender marked on their documentation, and as such are treated as the gender they were assigned at birth.

<sup>19</sup> A. Azim Idris, '[Free Simon Momoh: Group rallies behind Nigerian at risk of "losing" M'sian family](#)', *The Vibes*, 19 April 2021

<sup>20</sup> Ida Lim, '[Nigerian Simon Momoh thanks God after court win against Immigration move to deport him \(VIDEO\)](#)', *MSN*, 2 June 2022

<sup>21</sup> 151.170 (Viet Nam)

<sup>22</sup> International Labour Organization, [Skilled to Care, Forced to Work?](#), 2023, pp.53-59

37. The right to work is restricted for certain categories of migrants in Malaysia, and for all refugees. An example of the former is that international students in Malaysia are not allowed to work, despite the high tuition and other fees they pay.<sup>23</sup> Following graduation, it is difficult for them to secure an employment permit, because in addition to an academic qualification, they are required to have at least three years' paid work experience in the relevant field.<sup>24</sup> This significantly impacts those who have developed close ties with Malaysia and wish to stay in the country long-term. Those in relationships with Malaysian citizens or residents have particularly limited options if they are unable to legally marry.
38. Foreigners in possession of spousal visas do not have default permission to work in Malaysia, which impacts their families' economic and emotional well-being.<sup>25</sup> Such restrictions cause couples and families to leave the country for better opportunities overseas.
39. During the COVID-19 pandemic, the government subsidised workers' salaries so that companies could avoid layoffs, but this initiative did not apply to migrant workers. Migrant workers were forced to resign - affecting their residence rights in Malaysia - or take unpaid leave.<sup>26</sup>
40. Refugees do not have the right to work. As the state likewise does not provide them with any funding to cover their living costs, the vast majority live in poverty, supporting themselves when possible through illegal and low-paid jobs, at the mercy of exploitative employers. The exclusion of refugees from gainful employment has a devastating effect in terms of poverty, malnutrition, child growth, poor mental health, access to housing, and access to healthcare.
41. For refugees who are single mothers, employment opportunities may be doubly limited. Without childcare, some have to leave their children alone at home while they go out to work, despite the safety risks of doing so. Others are unable to work so they are constantly on the verge of eviction and starvation.
42. The government has long resisted calls for refugees to be granted the right to work. It is possible that such progress is being held back not only by xenophobia and a desire to 'discourage' the arrival of more refugees, but also by the profits to be made, both by the government and by individuals, through the lucrative business of migrant worker recruitment.
43. Of late, the government of Malaysia has indicated that it is reviewing a policy to allow refugees to work in formal sectors. This topic has been under discussion with no progress for many years; we hope for a timeline and swift action.<sup>27</sup>

## Right to peaceful assembly

44. Non-citizens in Malaysia are expressly prohibited from taking part in peaceful assemblies. The Peaceful Assembly Act 2012 states that a non-citizen who organises or participates in a peaceful assembly may be fined up to RM 10,000 (approx. 2,178 USD).<sup>28</sup> In its previous UPR cycle, Malaysia supported a recommendation to revise the Peaceful Assembly Act in order to

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<sup>23</sup> *The Star*, '[International students on their challenges](#)', 25 April 2021

<sup>24</sup> Expatriate Services Division, *ESD Online Guidebook*, n.d.

<sup>25</sup> Family Frontiers, '[Allowing non-citizen spouses the right to work can strengthen Malaysia's economy while protecting families of Malaysians](#)', *Malay Mail*, 30 April 2022

<sup>26</sup> Adrian Pereira in '[Malaysia: Migrants are amongst the first to be victimised and discriminated during the pandemic](#)', CIVICUS, 27 April 2020

<sup>27</sup> Nor Ain Mohamed Radhi, '[No decision yet to allow refugees to work in Malaysia](#)', *New Strait Times*, 21 December 2022

<sup>28</sup> Government of Malaysia, '[Peaceful Assembly Act 2012](#)', 1 September 2015

eliminate discrimination and hindrance to the freedom of association and peaceful assembly.<sup>29</sup> There have been some changes made to the legislation, however, the amendments passed to the Peaceful Assembly Act in 2019 failed to remove the potential of criminal prosecution for those organising or participating in peaceful assemblies, while leaving in place the ban on foreigners and youth.<sup>30</sup> In 2022, foreigners attending peaceful protests had their identification documents photographed by police and were called in for investigation.<sup>31</sup>

## Right to education

45. Although Malaysia in its previous UPR cycle supported a recommendation to redouble efforts to support education for all,<sup>32</sup> and noted a recommendation to ensure inclusion of migrant and refugee children,<sup>33</sup> non-citizens remain exempt from free education. As refugees do not have the right to work, they are least likely to be able to afford to send their children to school. Those who do manage to pay for some schooling, particularly those with large families, may deprioritise the education of girls.<sup>34</sup> Even when communities manage to provide education themselves, it can be precarious and subject to government raids and/or evictions. On 1 February 2023, a makeshift learning centre was raided, leading to the detention of 67 undocumented migrants, including 20 women and 16 girls; detainees included a 72-year-old and a two-month-old baby.<sup>35</sup>
46. Universities are apprehensive about accepting refugees, as non-Malaysian students are required to hold a valid student visa, which would normally be obtained prior to entering the country. The immigration department has reportedly warned some universities to stop accepting refugee students. It has been observed that refugee learners in Malaysia 'are judged for admission based on their ability to provide bureaucratic documents or pay expensive fees instead of their academic and experiential accomplishments.'<sup>36</sup>

## Right to health and access to health services

47. Although Malaysia supported the recommendation received in its previous UPR cycle to pursue efforts to improve the coverage of and accessibility to healthcare, it has failed to implement this.<sup>37</sup> In its 2022 state report to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Malaysia claimed that it 'treats all women equally, regardless of nationality or socioeconomic status in terms of access to healthcare services and fees'.<sup>38</sup> This is not the case: non-citizens face high costs to access the same healthcare

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<sup>29</sup> 151.147 (Czechia)

<sup>30</sup> Human Rights Watch, 'Malaysia: Events of 2019', World Report 2020

<sup>31</sup> 'Ainin Wan Salleh, ['Cops probe Malaysian activist, 2 Ukrainians over March 5 vigil'](#), *Free Malaysia Today*, 14 March 2022

<sup>32</sup> 151.192 (Chad)

<sup>33</sup> 151.197 (Honduras)

<sup>34</sup> Emily Fishbein and Jaw Tu Hkawng, ["'I lost my education": Refugees in Malaysia face widening school gap'](#), *New Naratif*, 4 January 2021

<sup>35</sup> Alyaa Alhadjri, ['Taught in transit: Immigration raid reveals 'school' for migrant children'](#), *Malaysiakini*, 2 February 2023

<sup>36</sup> Joshua Yee Aung Low, ['The higher education labyrinth for refugee learners in Malaysia'](#), *New Naratif*, 10 October 2022

<sup>37</sup> 151.178 (Mauritius)

<sup>38</sup> Sixth periodic report submitted by Malaysia under article 18 of the Convention, para. 92, 9 May 2022, CEDAW/C/MYS/6

services as Malaysians. Refugees with UNHCR cards or letters pay 50% less than other foreigners,<sup>39</sup> but despite this concession, costs are still prohibitive given the poverty that they are forced into. Refugees therefore typically delay seeking treatment, or go into debt to pay for it. Healthcare fees also deter them from sharing their full medical history with doctors, for fear that revealing additional issues may incur more costs.

48. In the same state report to CEDAW, Malaysia noted that ‘public health facilities are instructed to report undocumented asylum seekers and migrants to the Department of Immigration.’ This clearly functions to deter people in need of healthcare.
49. Those who do receive treatment in hospital are forbidden to leave before paying the fee in full. This is further complicated by the restriction of most refugees from holding bank accounts. As government hospitals refuse to receive bank transfers or process card payments by phone, bank account holders assisting refugees must attend in person.
50. While a few free or low-cost clinics provided by NGOs exist specifically for refugees, their locations may be inaccessible. More complicated health issues may not be treatable at free clinics. Financial assistance from UNHCR and NGOs is extremely limited; affording surgery is almost impossible.
51. In its previous UPR cycle, Malaysia was recommended to strengthen efforts to reduce maternal mortality, through improved access to maternal healthcare services.<sup>40</sup> However, as maternity services are particularly expensive, some refugee women instead give birth at home without support from trained professionals.<sup>41</sup> Healthcare providers lack sensitisation to the challenges faced by refugees; for example, one refugee known to the co-submitters, who went for her first maternity check-up in her ninth month of pregnancy after finally obtaining funds to cover it, shared that healthcare providers scolded her for not visiting a doctor sooner.
52. Depression, anxiety disorders and PTSD are common among refugees. Some have experienced trauma through sexual and gender-based violence. Xenophobia, fear of detention, poverty, and years in limbo further exacerbate mental health issues. Access to mental health services is extremely limited.
53. The rollout of COVID-19 vaccinations to non-citizens was slow and began considerably later than vaccinations for citizens,<sup>42</sup> despite the higher risk of infection among populations living in crowded and unsanitary conditions due to poverty. Malaysia made the progressive decision to provide vaccinations free of charge to everyone in the country, including non-citizens regardless of documentation. However, a hostile reception at many vaccination centres, along with fresh immigration raids, affected uptake.
54. Early in the COVID-19 pandemic, the government promised that undocumented migrants could come forward for testing and treatment without fear of penalisation, but no change in policy was made to guarantee their safety. Subsequently, mass immigration raids were carried out on 1 May 2020, resulting in over 2,000 arrests,<sup>43</sup> which the inspector-general of police claimed was a COVID-19 safety measure so that clusters could be easily detected.<sup>44</sup> These raids dismantled any trust that migrants and refugees might have had, reducing their likelihood

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<sup>39</sup> UNHCR Malaysia, [‘Health services’](#)

<sup>40</sup> 151.186 (Sri Lanka)

<sup>41</sup> Jaw Tu Hkawng and Emily Fishbein, [‘In Malaysia, undocumented women fear arrest during pregnancy’](#), *New Naratif*, 22 February 2021

<sup>42</sup> An exception is the case of Malaysian prisoners, who were vaccinated later than other citizens, despite their heightened risk of contracting COVID-19.

<sup>43</sup> Emily Fishbein and Jaw Tu Hkawng, *op. cit.*

<sup>44</sup> *Free Malaysia Today*, ‘Top cop says arrests of undocumented migrants part of COVID-19 measures’, 2 May 2020

of coming forward for treatment and vaccinations. That same month, deportees from Malaysia to Myanmar - who had been detained since before the mass raids - tested positive for COVID-19,<sup>45</sup> suggesting that they had contracted the virus while in detention. Subsequently, high numbers of COVID-19 infections,<sup>46</sup> including deaths, were revealed to have taken place inside Malaysia's prisons and immigration detention centres, where unsanitary conditions and multiple human rights violations prevented prisoners from protecting themselves.

55. Malaysia's shift to fully digitising<sup>47</sup> its COVID-19 mitigation measures and vaccinations proved challenging not only for citizens who are not digitally literate but also for undocumented migrants and refugees, who are restricted from even buying SIM cards. Furthermore, migrants and refugees may be rightly hesitant to share sensitive details such as their home address.<sup>48</sup>

## Right to an adequate standard of living

56. Refugees are generally prohibited from holding bank accounts. They therefore often have to rely on the assistance of third parties, who may demand a portion or steal their money. This is all the more difficult in a national context which increasingly promotes digitalisation, with limited alternatives for those who cannot comply.

57. It is common practice for prospective renters in Malaysia to be asked their race and nationality; there is no penalty for landlords who reject people on these grounds. Non-white foreigners are particularly affected in this context. Lack of valid passports leaves refugees and undocumented migrants most vulnerable to homelessness or to poor housing conditions.

58. In 2020, the immigration department warned landlords not to house undocumented migrants. The subsequent evictions affected UNHCR card holders as well as others.<sup>49</sup> Although the absence of guidance protecting refugees is of great concern, so too is the presumed acceptability of rendering undocumented migrants homeless.

59. In 2022, property owners complained that the management of a condominium in the Kuala Lumpur area had attempted to evict their refugee tenants, finally resorting to collaboration with a raid by the immigration department. Women and children as young as one year old were among the resultant detainees.<sup>50</sup>

## Trafficking

60. Large-scale 'anti-trafficking' raids of suspected commercial sex venues, such as massage parlours and entertainment centres, have frequently been violent in nature. Victims of these

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<sup>45</sup> Zaw Zaw Htwe, 'Myanmar migrants deported from Malaysia test positive for COVID-19', The Irrawaddy, 18 May 2020

<sup>46</sup> 777 out of almost 5,000 immigration detainees tested positive for COVID-19 in late May and early June 2020, as reported in Jaw Tu Hkawng and Emily Fishbein, op. cit.

<sup>47</sup> Alyaa Alhadjri, '[10k migrants get first dose of Covid-19 vaccine on last day of walk-in](#)', *Malaysiakini*, 22 August 2021. Following this day, all vaccinations had to be arranged through the government's app MySejahtera.

<sup>48</sup> From its inception, there was a lack of consistency and transparency surrounding the government app's functions and level of tracking. See *Focus Malaysia*, '[MySejahtera privacy, safety concerns remain unaddressed](#)', 18 June 2020

<sup>49</sup> Yiswaree Palansamy, '[Annuar Musa surprised at landlords kicking out UN refugee tenants, says they can rent](#)', *Malay Mail*, 13 July 2020

<sup>50</sup> Syed Jaymal Zahiid, '[June 2022 raid: Detention of women and children as young as one year old](#)', *Malay Mail*, 11 June 2022

raids are handcuffed and treated like criminals, and victim identification procedures are applied inconsistently. Often, victims' identity documents are seized, their bags and person searched, and they are not permitted to collect their belongings after the raid.<sup>51</sup> Victims are asked to pose with clients for dissemination in popular media without their faces being hidden. Some victims have been detained and deported as a result.<sup>52</sup> Undocumented foreign trafficking victims have a considerably lower chance of obtaining protection orders compared with foreign victims who have valid immigration papers.<sup>53</sup> These practices violate the Office of the High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking.<sup>54</sup>

61. Shelters for trafficking victims represent an extension of the immigration detention regime. Although touted as a so-called 'safe haven' for trafficking survivors, residents do not have automatic freedom of movement or communication with the outside world.<sup>55</sup> Although the law permits them to work, this is rarely implemented. Their default detention is neither empowering nor rehabilitative.
62. Police and immigration officials are far from immune to the mass xenophobia promoted by successive governments. Therefore, any foreign woman caught doing perceived 'bad things' - from working illegally to engaging in sex work - may face violent repercussions from government agencies which operate with near impunity.
63. Anti-trafficking legislation may be weaponised by police against vulnerable migrants. One such example is a 2020 case in which a police officer allegedly kidnapped and raped two Mongolian women. When three of their friends, also all Mongolian, raised the alarm, the victims were rescued and the officer arrested. However, the three Mongolian whistleblowers were then confined against their will to a 'safe house' through the use of an Interim Protection Order. This action was framed by the police as necessary for an investigation into human trafficking. Photos of the women at the police station were also circulated on social media. After 17 days, they were finally freed.<sup>56</sup>

## Human rights defenders

64. Malaysia's previous UPR cycle saw a recommendation that it continue developing efforts to guarantee freedoms and safety of human rights defenders.<sup>57</sup> However, in 2020, a woman human rights defender was subjected to coordinated online gender-based violence after criticising Malaysia's policy of pushing boats of Rohingya asylum seekers back out to sea. Her personal details were leaked and she received numerous threats of rape and other violence. A Facebook page which appeared to be linked to a political party shared her personal details

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<sup>51</sup> Haezreena Begum binti Abdul Hamid, *Sex trafficking, victimisation and agency: The experiences of migrant women in Malaysia*, 2020

<sup>52</sup> US Department of State, [2022 Trafficking in Persons Report: Malaysia](#)

<sup>53</sup> Ibid.

<sup>54</sup> OHCHR, [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), 2002

<sup>55</sup> H. B. A. Hamid, '[Shelter Homes – Safe haven or prison?](#)', *Anti-Trafficking Review*, issue 20, 2023, pp. 111-134.

<sup>56</sup> Hidir Reduan Abdul Rashid, '[Three Mongolian whistleblowers on alleged rape walk free](#)', *Malaysiakini*, 28 April 2020

<sup>57</sup> 151.138 (Uruguay)

and falsely alleged that she was involved in a conspiracy to accuse the Malaysian government of cruelty.<sup>58</sup>

65. In 2021, another woman human rights defender was investigated by police and charged with sharing offensive content,<sup>59</sup> after making a Facebook post about the inhumane conditions in Malaysia's immigration detention centres, despite these conditions having been long documented, including by Malaysia's national human rights institution.<sup>60</sup>

## Recommendations

We call on Malaysia to:

1. Permit international students to work legally, and ensure that they have accessible pathways to work in Malaysia following graduation.
2. Extend recognition on an equal basis, to all marriages legally registered outside Malaysia, including for migrants; and afford the right to marriage to all foreigners in Malaysia.
3. Deter and penalise discrimination in housing, including on the grounds of race, nationality, and documentation or immigration status; and prohibit landlords and building management from asking for visas, passports and/or UNHCR documentation of tenants.
4. End the requirement for migrant workers to be tied to their employers, and permit change of employment, and self-employment, for non-citizens, without obstructive barriers.
5. Ratify the UN Refugee Convention.
6. Implement measures to permit refugees to work legally.
7. Dismantle the TRIS system, refund refugees who had paid for a TRIS card, and ensure that data obtained through the system is erased.
8. Immediately halt plans to remove UNHCR from Malaysia; ensure that this is widely communicated to refugees, enforcement officers and the general public; and collaborate with UNHCR to improve overall conditions for refugees and asylum seekers in Malaysia.
9. End the practice of pushbacks, providing immediate assistance to boats in distress, including safe passage to land in Malaysia; and end the detention of survivors.
10. Equalise healthcare fees for all, regardless of citizenship or documentation; sensitise healthcare providers, including administrative staff, to the socioeconomic factors affecting refugees' health in Malaysia; and allow bank transfers as payment to government hospitals for healthcare.

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<sup>58</sup> *Free Malaysia Today*, "["PPBM-linked" FB page named for defaming Malaysia rep of UK-based Rohingya body](#)", 27 April 2020

<sup>59</sup> Heidi Quah was charged under Section 233 (1) (a) of the Communications and Multimedia Act 1998, which is written in overly broad language and has been frequently used to target human rights activists.

<sup>60</sup> SUHAKAM, [Annual Report](#) 2016