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RECOGNITION AND PROTECTION OF REFUGEES IN MALAYSIA

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Abstract: Malaysia possesses a great reputation for allowing refugees to live in the country until they repatriate or resettle in a third country. People - who came to Malaysia due to wars, armed conflicts, political conflicts, and persecution in their country of origin - need to approach the United Nations High Commission for Refugees (UNHCR) for the formal recognition as refugees. They can be recognised as refugees by the UNHCR after undergoing through a lengthy interview process to determine whether they are genuine refugees. However, they are not legally recognised in Malaysia due to the fact that Malaysia is not a party to the 1951 Convention Relating to the Status of Refugees (1951 Convention) and also the 1967 Protocol Relating to the Status of Refugees (1967 Protocol). Besides, there is no specific domestic law dealing with the protection and rights of refugees. Accordingly, refugees are exposed to various kinds of exploitations while waiting for the repatriation to their own country or resettle in a third country. Sometimes, the waiting period may well be over a decade due to numerous reasons.

Key words: Refugee, Stateless Person, Asylum Seeker, 1951 Convention Relating to the Status of Refugees, United Nations High Commission for Refugees (UNHCR)
INTRODUCTION

International refugee law and humanitarian law are both part of human rights law. The rationale behind these laws is to safeguard people in particular situations (such as circumstances like armed conflicts and oppression). Later on, human rights laws were further developed, however, it is far crucial to regard refugee law and refugee protection as a part of the human rights context. It is also essential to note that there are some States that are still not signatories of the 1951 Convention. The overall standards of law apply universally and even the few States that have not yet signed the 1951 Convention are hosts to a large number of refugees and are respectful to the principles of international refugee law, particularly the code of non-refoulement (UNHCR, 1992).

OBJECTIVE

This paper aims at identifying existing legal frameworks that can be applicable for the protection of refugees in Malaysia.

LITERATURE REVIEW

Authors want to explore whether it is time for Malaysia to become a party to the 1951 Convention. Alternatively, this issue can also be addressed by enacting a local statute for protecting refugees in Malaysia without becoming a member to the 1951 Convention.
FINDINGS

- The Nature of International Refugee Law

The 1951 Convention

- occurred from 1947 to 1950, based on the suggestion of the UN Human Rights Commission whose early thought focused toward the people who were not protected by their own states.

The 1967 Protocol
- presented as a result of continuous refugee outbursts right after the introduction of the original 1951 Convention.

Third Parties’ Are Not Bound by the 1951 Convention and the 1967 Protocol
- There are specific Articles in both the 1951 Convention and the 1967 Protocol which have the customary law standing, or “erga omnes” which means that countries which are neither signatory to the 1951 Convention nor the 1967 Protocol ought to uphold those Articles.

- Three Pillars of International Law for the Protection of Refugees

Definition of the Refugee under International Law: Who Are Refugees?
- The term refugee is being used for persons who left their place of stay for a variety of reasons, such as violence and conflict. Sometimes the term refugee is used to refer to people who have been displaced from their home due to natural disaster. However, under international law, it has more precise meaning (Refugee Council of Australia, 2016).

Distinction between the Refugee, Asylum Seeker and Economic Migrant
- Article 1A (2), now read along with the 1967 Protocol and with exemption of time-based and location restriction, gives a broad meaning of the word “refugee” as including any individual who is not on the boarders of their nation of origin and incapable or reluctant to go back or to put themselves under its defense, due to logical fear of harassment because of race, faith, citizenship, affiliation with a certain societal group (an extra reason lacking in the UNHCR Statute), or political view.
- An asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated.
- An economic immigrants is a persons looking for more favourable employment and economic stability. The aim of their stay is just to acquire enough monetary funds and then go back to their countries to purchase land, build a house, sustain immediate and extended family and retire in their homeland.

Asylum Seeker
- An individual that his application for refuge yet to be processed. The asylum system is properly arranged to identify whether someone is eligible to be a refugee.
- In different situations, refugees may not be capable of gaining access to official status determination procedure or they may not even know that they have a right to seek security as a refugee.
-not every asylum seeker is a refugee. Some may have acceptable statements for security that warrant them to global safety and aid. The rest will not be determined neither as refugees nor needing any other type of international security.

IDPs and Refugees
- Same as refugees, IDPs have escaped from their homes due to forceful situations (like armed conflict or war, widespread violence and disregard of human rights) but dissimilar to refugees, IDPs have not gone across international borders to get security but stayed inside their home states.

- UN Mandate for the Protection of Refugees
  - The UNHCR, a branch of the UN whose primary function is to provide security and aid to refugees around the world, is the one taking care of the refugees. The organisation was established on 14 December 1950 with its base in Geneva, Switzerland.
  - In December 2003, the UN General Assembly decided to abolish the time constriction on the order of the UNHCR till the time comes when the crisis of refugees is resolved. Since its establishment, the organisation managed to support more than 50 million refugees to successfully have a start over in their lives, in the process being awarded two Nobel Peace Prizes – in 1954 and in 1981 respectively.

- Fundamental Principles of International Refugee Law

Legal Basis of Non-refoulement
- As stated in Article 33(1) that: “No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

Exceptions to the Principle of Non-refoulement
- In principle, this signifies that refugee can, in special circumstances, be deported in two circumstances: (1) if they pose a danger to the host country; and (2) when their confirmed felonious character and documentation causes a threat to the public.

Minimum Standards of Treatment
- These privileges encompass unhindered entry to the courts of law, to primary education, to work and the facilitation of documentation, which include a passport.
- Most countries provide the travel document, which has largely been recognised as the old “Nansen passport”, an identification document for refugees created by the founding Commissioner for Refugees, Fridtjof Nansen, in 1922 (Introductory Note, the 1951 Convention).
- Further provisions are concerned with rights such as right of entry to courts, education, social security, shelter and liberty of movement (OHCHR, 1993).
• Treatments of Refugees in Malaysia
  - In the 1970s and 1980s, the UNHCR helped the government of Malaysia to take in and locally settle more than 50,000 Muslims from Philippines, Mindanao, who escaped to Sabah. The UNHCR also helped the government of Malaysia to locally shelter thousands of Cham Muslims from Cambodia during the 1980s, plus hundreds of Bosnians in the 1990s. In the last 10 years, the UNHCR based in Malaysia resettled over 100,000 refugees (Yunus, 2017).
• Malaysian Laws Relating to Refugees
  - Due to the fact that the government of Malaysia has not signed yet the 1951 Convention and the 1967 Protocol, refugees and asylum seekers are consequently “lumped together” as unlawful immigrants as stated in the Immigration Law of 1959/1963.
  - Modifications made to the law in 1997 and 2002 warranted tougher punishments for immigration crimes, including as equal as a five-year prison verdict, a MYR 10,000 fine and lashing not exceeding 6 lashes.

CONCLUSION

Although Malaysia is not signatory to the 1951 Convention and 1967 Protocol, but it possesses a great reputation for allowing refugees to live in the country until they repatriate to their country of origin or resettle in a third country. On temporary basis, the power that has been bestowed upon minister of home under section 55 of Immigration Act can be invoked in order to solve the various problems that the refugees face and legalise their presence in the country. However, in the long term, Malaysian government may either ratify the 1951 Convention and the 1967 Protocol or enact a new law that governs refugee matters as the issues of refugees can be continuous in nature.

SELECTIVE REFERENCES