

**LEGAL RIGHTS OF REFUGEE AND ASYLUM SEEKING
CHILDREN IN MALAYSIA**



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KELULUSAN PERMOHONAN DANA KECEMERLANGAN 02/2011

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Dengan hormatnya perkara di atas adalah dirujuk.

2. Sukacita dimaklumkan pihak Universiti telah meluluskan cadangan penyelidikan Y. Brs. Prof./tuan/puan untuk membiayai projek penyelidikan di bawah Dana Kecemerlangan UiTM.

3. Bagi pihak Universiti kami mengucapkan tahniah kepada Y. Brs. Prof./tuan/puan kerana kejayaan ini dan seterusnya diharapkan berjaya menyiapkan projek ini dengan cemerlang.

4. Peruntukan kewangan akan disalurkan melalui tiga (3) peringkat berdasarkan kepada laporan kemajuan serta kewangan yang mencapai perbelanjaan lebih kurang 50% dari peruntukan yang diterima.

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5. Untuk tujuan mengemaskini, pihak Y. Brs. Prof./tuan/puan adalah diminta untuk melengkapkan semula kertas cadangan penyelidikan sekiranya perlu, mengisi borang setuju terima projek penyelidikan dan menyusun perancangan semula bajet yang baru seperti yang diluluskan. Sila lihat lampiran bagi tatacara tambahan untuk pengurusan projek.

Sekian, harap maklum.

"SELAMAT MENJALANKAN PENYELIDIKAN DENGAN JAYANYA"

Yang benar

DR. OSKAR HASDINOR HASSAN
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5.2 Enhanced Executive Summary

(Abstract of the research)

Malaysia has long served as temporary host for refugees and asylum seekers fleeing persecution and armed conflict. Despite the increasing number of refugees and asylum seekers, Malaysia is still one of the few remaining countries in the world that has not ratified the 1951 Refugee Convention and its Protocol 1967. Consequently, refugees and asylum seekers are not recognized in Malaysia. Notably, Malaysia has ratified the Convention on the Rights of the Child on 17th. of February, 1995. This is important to refugee and asylum seeking children because it sets the most standards concerning children. This research will therefore, examine the legal rights of refugee children in Malaysia as set forth in the international conventions. Through this study recommendations will be made to uphold the refugee and asylum seeking children's rights in Malaysia as set forth in the international conventions to which Malaysia is a signatory. The methodology chosen for this research is qualitative in which the findings are based upon both primary and secondary data. This study may form the basis for policy maker's consideration in formulating a legislation that specifically addresses the matter of refugee and asylum seeking children in Malaysia. It also provides food for thought for NGOs, legal practitioners, academics, students and those who concern with the rights of refugee and asylum seeking children in Malaysia.

5.3 Introduction

Malaysia has long served as temporary host for refugees and asylum seekers fleeing persecution and armed conflict. As of October 2011, UNHCR has registered 95,300 refugees and asylum seekers, of whom 87,300 were from Myanmar and the rest originated from Sri Lanka (4,300), Somalia (1,100), Iraq (740) and Afghanistan (440) (NST,2012). However, the number of people of concern is increasing year by year as the UNHCR estimated that some 15,000 new arrivals in the country in 2012. This is based on the average yearly arrivals of asylum seekers and the prevailing situations in refugee-producing countries (UNHCR Global Appeal 2012-2013). As of January 2012, there were approximately 216,900 people of concern in Malaysia comprising refugees, asylum seekers, stateless and others of concern (UNHCR global Appeal 2012-2013).

Despite the increasing number of refugees and asylum seekers, Malaysia is still one of the few remaining countries in the world that has not ratified the 1951 Refugee Convention (hereinafter referred to as the "1951 Refugee Convention") and its Protocol 1967. Therefore, refugees and asylum seekers are not recognised and they receive very little protection and assistance from the Malaysian government. Malaysian law makes no distinction between refugees and undocumented migrants. Refugees and asylum seekers are vulnerable to arrest for immigration offences and may be subjected to detention, prosecution, whipping and deportation under the Immigration Act 1959.

Absence of any legal frameworks governing refugees' affairs in Malaysia has resulted in several problems such as charges and penalties, overcrowding and unhygienic condition in camp, malnourishment, ill treatment and abuse and exposed to be victims of human traffickers (Karen Zusman, 2009). Refugee and asylum seeking children are not exempted to face those problems. The main problem is they have no birth certificates and other identification documents which would facilitate their access to basic needs, particularly education and health care.

In Malaysia, there are some 18,500 refugee children below the age of 18 and some 13,800 of them are of school-going age. It is estimated that only approximately 40% of these children have access to any kind of education and the rest are not in school (UNHCR, 2011). The efforts came from the UNHCR itself and NGO to ensure those children are given proper education. Thus, Shelter and Refugee School Adoption Programme were set up to achieve that goal.

Malaysia however, has ratified the Convention on the Rights of the Child (hereinafter referred to as the "CRC") on 17th. Of February, 1995. This CRC provides