



10 Myths about Labor's plan to swap refugees with Malaysia

In a joint statement with Malaysian Prime Minister Datuk Seri Najib Tun Razak on May 7, the Prime Minister Julia Gillard announced an agreement had been reached to swap 800 future irregular maritime arrivals from Australia with 4000 UNHCR recognised refugees from Malaysia over the next four years.¹ Although the details of the plan are yet to be fully revealed, a number of myths about this so called 'solution' have already arisen in the media. Here are the facts.

MYTH 1: The Labor government is offering boat arrivals a tough but fair choice.

As a result of this new policy, Gillard's advice to future asylum seekers is, 'Don't get on that boat.. what it will mean is you have given your money to people smugglers, you have risked your life at sea and you will be at a real risk of ending up in Malaysia instead.'² Gillard fails to outline the consequences for asylum seekers who take her advice and do not leave. This would be to either (1) stay and face persecution; or (2) remain in a country of first asylum where two-thirds of the world's refugees remain in exile without basic rights for an average of 20 years.³ Hardly a fair choice.

MYTH 2: Australia is swapping 'illegal' asylum seekers for a greater number of 'genuine' refugees

Asylum seekers who enter Australia undocumented are not illegal under the Refugee Convention or Australian law.⁴ Those who are determined to be refugees – which include the vast majority of boat arrivals – have an equal right to be protected as those waiting in overseas camps. No human being is more or less deserving of freedom from persecution. Furthermore, asylum seekers are not required to remain in countries such as Indonesia or Malaysia which are not signatories to the Refugee Convention and are either unable or unwilling to provide asylum seekers with the basic necessities of life.

MYTH 3: Labor's new policy sends onshore asylum seekers to the 'back of the queue.'

The new policy will only apply to unauthorised arrivals by sea and not unauthorised arrivals by air. If the Gillard government was truly concerned about mythical queue jumpers, why do they choose to only selectively target unauthorised boat arrivals? The answer is that neither the Labor government nor the opposition are interested in any misplaced notions of fairness; only the potential political gain from exploiting popular anxiety about being invaded by 'boat people'. Furthermore, there is no just and orderly queue that boat arrivals have 'jumped'. Less than one percent of all refugees in the world are able to access a queue for resettlement. Even if all refugees were placed in such a queue it would be a wholly unmanageable. There are 10 million refugees in the world. If every one of them joined a queue, it would take 135 years to clear.⁵ The 'queue' is a fantasy of those who wish to shift Australia's responsibility to the world's most vulnerable people offshore.

MYTH 4: Removing 800 asylum seekers to Malaysia is cost-effective

Chris Bowen announced that it would cost \$76 million to fly the 800 asylum seekers from Malaysia to Australia.⁶ The cost of processing asylum seekers while living in the community is roughly equivalent to the income rate paid through the Asylum Seeker Assistance Scheme (ASAS). The government spent 9 million dollars on this scheme to provide services to 2802 asylum seekers already living in the community over the entire 2009–10 financial year. At that rate, \$76 million would provide for 23,661 asylum seekers living in the community for one year. While this does not include any additional health, counselling and case

¹ Malaysian National News Agency, 'Joint Statement By Prime Ministers Of Malaysia, Australia On People Smuggling,' *Bernama.com*, <http://www.bernama.com/bernama/v5/newsgeneral.php?id=584652>, 07 May 2011.

² Samantha Maiden, 'Prime Minister Julia Gillard gambles on asylum seekers,' *Herald Sun*, <http://www.heraldsun.com.au/news/national/the-malaysia-solution/story-e6frf716-1226051823034>, 08 May 2011.

³ For more on the conditions of countries of first asylum, see the ASRC's, 'Myths, Facts and Solutions,' <http://www.asrc.org.au/media/documents/myths-facts-solutions-info-apr-2011.pdf>, p 11.

⁴ See the ASRC's, 'Myths, Facts and Solutions,' <http://www.asrc.org.au/media/documents/myths-facts-solutions-info-apr-2011.pdf>, p 3.

⁵ Refugee Council of Australia (RCOA), Media Release, http://www.refugeecouncil.org.au/docs/releases/2010/100623_UNHCR_stats.pdf, 23 June 2010.

⁶ Samantha Maiden, 'Prime Minister Julia Gillard gambles on asylum seekers,' *Herald Sun*, <http://www.heraldsun.com.au/news/national/the-malaysia-solution/story-e6frf716-1226051823034>, 08 May 2011.



management costs, the total figure is undoubtedly significantly lower than flying asylum seekers to Malaysia. Of course, the human cost of deporting asylum seekers to inhumane conditions is incalculable.

MYTH 5: Asylum seekers transferred to Malaysia by Australia will be treated humanely.

The joint statement released by Gillard and the Prime Minister of Malaysia declares that ‘transferees will not receive any preferential treatment over asylum seekers already in Malaysia.’⁷ This is an alarming announcement given what is known about the current treatment of asylum seekers there. A recent investigation by Amnesty International reports that refugees and asylum seekers in Malaysia are abused, exploited, arrested and locked up – in effect, treated like criminals.⁸ Malaysia has not signed the Refugee Convention and so does not officially recognise refugee status. Asylum seekers face the daily prospect of being arrested, detained in squalid conditions, and tortured and otherwise ill-treated, including by caning. Almost 30,000 foreigners, including asylum seekers and refugees, have been caned in Malaysia in the last five years. Amnesty International, which found that the practice amounted to torture, explains the activity in detail:

Specially-trained caning officers tear into victims’ bodies with a metre-long cane swung with both hands at high speed. The cane rips into the victim’s naked skin, pulps the fatty tissue below, and leaves scars that extend to muscle fibre. The pain is so severe that victims often lose consciousness.⁹

MYTH 6: Asylum seekers will be put in a queue and get a fair chance to be resettled.

The exact size of Malaysia’s asylum seeker and refugee population is not known, however, estimates vary from 90,000 to over 170,000 asylum seekers and refugees. By the end of February 2010, UNHCR said it had registered some 82,400 asylum-seekers and refugees, 18,500 of whom were children. However, UNHCR has acknowledged that a large number of people of concern remain unregistered. Limited funding and a difficult operating environment mean that the needs of the refugee population currently outweigh the capacity of UNHCR to respond adequately.¹⁰ Asylum seekers must wait to undergo the refugee status determination process before being recognised as refugees. Given there is only limited numbers, not all will be submitted by UNHCR for resettlement. Only 5,865 refugees were resettled in 2008 and 7,509 in 2009.¹¹ Clearly, the prospects of resettlement for up to 170,000 asylum seekers and refugees in Malaysia are dim.

MYTH 7: Asylum seekers will live comfortably in the community

While living in the community is preferable to detention, asylum-seekers and refugees in Malaysia are vulnerable to abuse and violence in their homes and in public. During immigration raids, police employ violent tactics to extort money from them, or to intimidate and harass them. Women refugees and asylum seekers are often the targets of violence, including sexual or gender-based violence. They have little protection against such violence, with minimal access to lawyers, medical treatment, safe houses and other necessary support. ‘My daughter is only 12. Local men have tried to take her twice already,’ one woman, a Rohingya refugee from Myanmar, told Amnesty International. ‘I went to the police but they’ve done nothing. How can I protect my daughter? At night they come to our house and demand money or a girl. We move but it keeps happening. We don’t know what to do.’¹²

Furthermore, asylum seekers have no legal right to work in Malaysia. They do not receive any assistance from the government and may resort to working without authorisation just to survive. Working illegally exposes them to abuse and exploitation.

⁷ Malaysian National News Agency, ‘Joint Statement By Prime Ministers Of Malaysia, Australia On People Smuggling,’ *Bernama.com*, <http://www.bernama.com/bernama/v5/newsgeneral.php?id=584652>, 07 May 2011.

⁸ Amnesty International, ‘Abused and Abandoned: Refugees Denied Rights in Malaysia,’ <http://www.amnesty.org/en/library/asset/ASA28/010/2010/en/2791c659-7e4d-4922-87e0-940faf54b92c/asa280102010en.pdf>, 16 June 2010.

⁹ Amnesty International, ‘Case study: Nian Vung, a refugee caned in Malaysia after fleeing Myanmar,’ <http://www.amnesty.org/en/library/asset/ASA28/015/2010/en/26559f81-7b42-49e9-a1a9-2fb33b2a15ad/asa280152010en.pdf>, 6 December 2010.

¹⁰ Amnesty International, ‘Abused and Abandoned,’ p. 3.

¹¹ Amnesty International, ‘Abused and Abandoned,’ p. 17.

¹² Amnesty International, ‘Abused and Abandoned,’ p. 15.



MYTH 8: Asylum seekers will not be placed in detention

The Malaysian High Commissioner in Canberra has said that the transferred asylum seekers would not be placed in detention, but instead would 'mingle' in the community while their claims were processed.¹³ Yet Amnesty International reports that asylum seekers and refugees, *including those with UNHCR documents*, are susceptible to detention in 'filthy and overcrowded' conditions. Many are held for months without access to lawyers and with no way of appealing against their detention. Some are detained indefinitely. Once in the centres, detainees lack proper health care, sufficient food and clean drinking water. Children under 18 are held with adults and abuse by detention staff is rife. Poor detention conditions have led to serious illness and in some instances, death.¹⁴ In May, two inmates from Myanmar died from leptospirosis, a bacterial infection caused by contact with water contaminated by animal urine, at the Juru Immigration Depot. In August, a detainee at the KLIA Immigration Depot died after contracting the H1N1 flu virus. Other inmates were hospitalised in both instances.¹⁵ Given the lack of integrity and oversight in Malaysia's detention regime, Neither the Malaysian nor the Australian government is in any position to guarantee that asylum seekers won't be detained in these squalid conditions.

MYTH 9: Once recognised as refugees, asylum seekers will be treated fairly.

Even if refugees are registered, their status is not respected by the authorities. Crackdowns by the government have seen refugees arrested and sent to detention, even those holding UNHCR cards. The people they arrest are subject to humiliation, physical abuse, theft and extortion.¹⁶ Refugees reported to Amnesty that when they showed state officials or police personnel their UNHCR card, they were told it meant nothing. Some reported that the authorities threw away their UNHCR documents before arresting them. Others who were still awaiting an actual card, showed their UNHCR appointment letter instead, but were told it would not protect them from arrest or detention. Still others said that they could avoid arrest or detention by paying a bribe.¹⁷ Like asylum seekers, UNHCR registered refugees have no right to work.

MYTH 10: Gillard's new policy is legal and legitimate

The legal grounds on which the Labor Government's new policy is based are questionable. Australia has strict obligations under the Refugee Convention and various other international human rights treaties to which we are a signatory. Chris Bowen is apparently aware of the heavy moral burden and the questionable legitimacy this new policy carries: 'I expect protests, I expect legal challenges, I expect resistance,' Bowen declared shortly after the policy was announced.¹⁸ Australia's detention regime is at a breaking point. Overcrowding, riots and self-harm rates have skyrocketed. Instead of recognising the source of the problem – mandatory detention – the Labor government has chosen to punish the victims by 'getting tough on asylum seekers.' Bowen expects resistance; the moral depravity of this new policy and government's horrendous treatment of asylum seekers demands it.

¹³ Malaysian National News Agency, 'Malaysian Envoy: Asylum Seekers Will Be Treated With Dignity,' *Bernama.com*, <http://www.bernama.com/bernama/v5/newsgeneral.php?id=584836>, 8 May 2011.

¹⁴ Amnesty International, 'Abused and Abandoned,' p. 15.

¹⁵ Amnesty International, 'Malaysia Human Rights Report 2010,' <http://www.amnesty.org/en/region/malaysia/report-2010>.

¹⁶ Amnesty International, 'Abused and Abandoned,' p. 9.

¹⁷ Amnesty International, 'Abused and Abandoned,' p. 11.

¹⁸ Paul Maley, 'Asylum swap deal with Malaysia a 'one-off' for now,' *The Australian*, <http://www.theaustralian.com.au/national-affairs/foreign-affairs/asylum-swap-deal-with-malaysia-a-one-off-for-now/story-fn59nm2j-1226051909347>, 08 May 2011.