

## **Indonesia/Malaysia I-TRAN Mission 2016**

by David Matas

### **Participants**

The International Tamil Refugee Assistance Network (I-TRAN) conducted a mission to Malaysia and Indonesia during the first two weeks of February 2016. Participants in the mission were

- 1) David Matas, an international human rights lawyer based in Winnipeg, Manitoba, Canada,
- 2) Arasa Rathnakanthan or Kanthan, an I-TRAN activist based in Melbourne, Australia
- 3) Maha Ramakrishnan, or Maha, a Malaysian Tamil lawyer in private practice, in Kuala Lumpur, Malaysia and
- 4) Niresh Alfred, an I-TRAN volunteer based in Bali, Indonesia.

### **Meetings**

1) Maha, Kanthan and David Matas met in Parliament with the Parliamentary Caucus on Human Rights in Sri Lanka on Tuesday February 3rd, 2016. Amongst the Parliamentarians attending were R. Sivarasa, Member of Parliament from the People's Justice Party and the sole Sri Lankan Tamil member of Parliament, Johari Bin Abdul, chair of the Caucus and an ethnic Malay, and Kula Segaran.

2) David Matas met that same day with a team from the Office of the United Nations High Commissioner for Refugees (UNHCR) headed by Deputy Director Brian Gorlick.

3) Kanthan and David Matas then went to Bali to visit on 5th February, 2016 refugees at the

Immigration Detention Centre, along with Niresh Alfred.

4) This trio went to Jakarta on February 7th for meetings with refugees on February 8th in Bogor, north of Jakarta and in South Jakarta.

5) On February 9th, the trio met with Steve Hamilton of the International Organization for Migration (IOM), and a team at the Office of the United Nations High Commissioner for Refugees headed by Keith Jordan.

6) On February 10th, the trio met with Astari Anjani of the Directorate of Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs, Republic of Indonesia.

7) Kanthan and David Matas on February 10th returned to Kuala Lumpur and met with refugees and the NGO Suaka on Thursday February 11th.

8) This duo, in the final meeting of the mission, on Friday February 12th, met with Daniel Lo, Special Officer (Human Rights) to Senator Paul Low, Minister in the Prime Minister's Department.

9) Lars Stenger, National Information and Advocacy Officer, Jesuit Refugee Service Yogyakarta, Indonesia provided information through an e-mail exchange. The mission was unable to meet the JRS in person because of time limitations.

### **Refugee population characteristics**

Because, in all, the mission met with over 100 Sri Lankan Tamil refugees in the two countries and interviewed them individually, it was possible to discern some overall patterns.

1) There are many more Sri Lankan Tamil refugees in Malaysia than in Indonesia, almost six times as many. As of January 31, 2016, the Office of the United Nations High Commissioner for Refugees in Kuala Lumpur had 1,715 asylum seekers from Sri Lanka and 1, 546 refugees, for a total of 3,261. In the last ten years, 419 Sri Lankans have been resettled. Total volume of Sri Lankans persons of concern since 2003 has been 10,000.

In Indonesia at the end of 2015, the Office of the United Nations High Commissioner for Refugees had on its books 293 Sri Lankan asylum seekers and 319 refugees for a total of 612 people. The International Organization for Migration is providing financial assistance to 532 Sri Lankans. Most of them, 424, are located in Medan, the home of the majority of the local Indonesian Tamil population. The 532 being supported by the IOM consists of 187 refugees, 251 asylum seekers, 27 whose claims have been rejected and who have appealed, 22 finally rejected and 45 who are unregistered and have not engaged the refugee status determination process.

2) The population of Sri Lankan Tamil refugees in Malaysia has, on average, been there longer than the population of Sri Lankan Tamil refugees in Indonesia. This has partly due to the fact that there is less resettlement proportionately and in absolute numbers from Malaysia than from Indonesia. As well, local integration, though difficult in both countries, is easier in Malaysia because of the large local Tamil population in Malaysia, more than 1.7 million. Sri Lankan Tamil refugees in Malaysia can easily find work with Tamil employers, even though the work is not officially authorized.

3) It is apparent, with a population of about 1,500 recognized refugees, and a resettlement figure of about 40 a year, that the Sri Lankan Tamil refugee population in Malaysia, absent a miracle in Sri Lanka, is, by and large, there to stay. Many of the refugees we met there had been there nine or ten years. Children had been born and were growing up there. Though the official Government of Malaysia position is that these refugees (and others) are not

welcome and should move on, that position is, for the Government, a political fiction and not a reality.

4) There is a substantial outpouring of refugees from Sri Lanka since the end of the civil war. Most of the refugees we met in Indonesia fit this description.

The civil war created refugees who were attempting to escape the cross fire as well as refugees at risk from the LTTE or Tamil Tigers. The end of the civil war and the defeat of the LTTE have ended the outflow of these sorts of refugees.

Since the end of the civil war, there has been created, in contrast, a new class of refugees, those who had been protected by the LTTE in the LTTE controlled area of the island and who have, with the end of the civil war lost that protection. The Sri Lankan military has taken advantage of the end of the civil war, in addition to the mass killing of innocent civilians in the Mullivaikal, to go after anyone with any past association with the LTTE no matter how remote, and their relatives.

Targets have been brutalized; women and girls have been sexually assaulted. Since the LTTE was the effective government of a substantial portion of the island for decades, people who have had a wide variety of ordinary everyday governmental functions have been victimized.

Past repression generates future repression. Because there has been some attempt, however fitful, to bring civil war gross human rights violators to justice, those same violators, on the Sri Lankan army side, seek impunity by going after witnesses to their crimes. The global effort to seek justice in the aftermath of the civil war itself is producing refugees.

Because of the end of the civil war, some previously at risk populations would not be at risk

on return. However, the large internally displaced population in Sri Lanka argues against return. As of July 2015, there were, according to the Internal Displacement Monitoring Centre, almost 74,000 internally displaced in Sri Lanka. It makes little sense for the externally displaced to return to Sri Lanka to internal displacement.

5) There has been a substantial movement of Sri Lankan Tamil refugees from Malaysia to Indonesia. Many of the refugees we interviewed in Indonesia had been in Malaysia.

On its face, this movement is surprising, since Malaysia is a far wealthier country with, as noted, a substantial local Tamil population. The local Tamil population in Indonesia is tiny and mostly assimilated. There are a number of different explanations refugees gave for this movement.

a) One is police harassment and corruption in Malaysia. While in form refugees in Malaysia and Indonesia have the same local status, that is to say none at all, refugees outside of detention in Malaysia are treated far worse. Periodic arrests and shakedowns of the undocumented are regular occurrences in Malaysia, but not in Indonesia. Refugees report being forced to pay bribes to local police once or twice a month, to avoid prolonged detention for an absence of Government of Malaysia documentation, which they can not get.

There is no similar pattern in Indonesia. Many refugees leave Malaysia and go to Indonesia to avoid the need to stay cooped up at home and off the streets or to pay bribes constantly.

There was a police raid outside the Offices of the United Nations High Commissioner for Refugees on February 11th while the I-TRAN mission was in Kuala Lumpur. UNHCR officials escorted those inside from the compound in taxis to avoid their being caught up in the police raid.

This raid was a graphic example of the cash grab motivation of police immigration repression. People outside the UNHCR offices are likely to have UNHCR ID cards or be eligible for them.

In principle, according to the policy of the Government of Malaysia, such people should not be subject to detention. The Attorney General in 2005 issued written directions stating that the Government would refrain from prosecuting holders of UNHCR documentation.<sup>1</sup> Because of this direction, holders of UNHCR documentation, whether asylum seekers or recognized refugees, should not be arrested.

b) Second, as noted, there is a much better chance of resettlement from Indonesia than Malaysia, partly because the numbers of refugees overall in Malaysia is much higher than in Indonesia, and partly because the Office of the United Nations High Commissioner for Refugees recognizes that local integration is a much less viable option for Indonesia than for Malaysia. Some Sri Lankan Tamil refugees move from Malaysia to Indonesia to increase their chances for resettlement.

c) Third, the International Organization for Migration in Indonesia but not in Malaysia provides accommodation, medical care and a food allowance to recognized refugees and asylum seekers referred to it by the Government of Indonesia or the Office of the United Nations High Commissioner for Refugees. The Government of Australia supports these arrangements financially under a tripartite regional cooperation model (RCM) agreement signed in 2001. The three partners are Australia, Indonesia and the IOM.

The reason Australia funded this arrangement was to discourage boat traffic from Indonesia to Australia. But it has the perverse effect of encouraging boat traffic to Indonesia from

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<sup>1</sup> FIDH and Suaram "Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination" March 2008 page 9

Malaysia, where no similar arrangements for refugees are available.

6) The Sri Lankan Tamil refugee population in both countries is woefully in need of legal assistance. Virtually all of the ones we interviewed had difficulty understanding the procedures to which they were subject and the standards which were being applied. The NGO Suaka in Indonesia<sup>2</sup> provides information through their website. But the websites information is in English and not Tamil.

Suaka provides some legal assistance and training for those who would be legal assistants. The case load for legal assistance is tiny compared to the overall refugee population, about 70 in all last year.

The JRS provides group sessions with information on the refugee status determination process at UNHCR. There are self help kits developed in collaboration with Suaka. Suaka plans to translate them into asylum seekers mother languages. But they are not translated yet.

JRS also provides individual consultations on the refugee status determination process and claims in Cisarua, upon request by asylum seekers, interview simulations and support by drafting statements for the asylum applications. JRS provided refugee status determination information and consultations to six Sri Lankan nationals during 2015.

In the absence of legal assistance, it was common place for refugees to come to the hearings of their claims unprepared. Alternatively, they would present made up stories they heard from rumour would likely succeed rather than their true stories. When they presented true stories on appeal, they faced credibility problems because of the initial attempt at deception.

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<sup>2</sup> suaka.or.id

7) There is also a substantial movement of Sri Lankan Tamil refugees from India to both Malaysia and Indonesia. This movement is also superficially surprising because the Government of Tamil Nadu provides financial support to this population, in camps. This population can work legally without permits. They can not work in the Government sector but can work in the private sector. The children can go to local schools and universities. Only medical school is barred to them. They do not face deportation back to Sri Lanka.

The reason for this secondary flight from India is the Q branch, a component of the security service of the Government of India. The Q branch terrorizes and brutalizes elements of this population. Q branch officials are not subject to legal controls and treat the Sri Lankan Tamil refugee population in a cruel and arbitrary way. Sexual harassment and abuse, arbitrary detention, curfews and threats are common place.

Suspected association with or even suspected support of LTTE does not lead in India to as dire a fate as in Sri Lanka; but the consequences are bad enough, sufficient to cause many to flee. The Q branch is engaged in active repression of any expression of opinion in favour of political goals at odds with those of the Government of Sri Lanka.

This reality, as well as many others, shows that what this population faces is not just a set of Indonesian or Malaysian or Indian problems, but rather a regional problem. The consequence is the need for a regional solution.

8) To the uninformed, the problems refugees faced in Sri Lanka are over because the civil war is over. Yet, informed country condition information shows that this is not so.

Also this refugee population faces a catch 22. Recent arrivals are likely to be recognized only because of some form of past perceived association with the LTTE. However, traditional resettlement countries, which view the LTTE as a terrorist organization, are reluctant to



resettle those with past links to the LTTE. The result is that those who are likely to be recognized as refugees are unlikely to be resettled for the very reason they are recognized as refugees.

Given global refugee numbers, resettlement of all refugees now found in the territory of states in Asia not signatory to the Refugee Convention is unlikely. There are just too many refugees for resettlement spots available. The difficulty in resettlement that Sri Lanka Tamil refugees face is not just the common global difficulty; it is worse because of the characteristics of this population.

9) Many we interviewed were victims of unscrupulous and corrupt travel agents and traffickers. They end up in Indonesia because they have been dumped their by agents who promised to bring them to Australia or New Zealand. Or they are caught en route by Indonesia maritime police because they are put on unseaworthy boats which are incapable of making the promised journey.

The reaction to this phenomenon from both states in the region and resettlement countries is to crack down on traffickers and smugglers and to create disincentives to this population to attempt to get to Australia or New Zealand by boat. The disincentives are detention, denial of family unity, status, work permits, education, and documentation and also, in the case of Australia, relocation to remote islands.

What needs either to be added to or to replace these measures in order to combat the scourge of traffickers and smugglers is incentives to this population to stay where they are.

Those incentives should include

- a) a reasonably speedy refugee determination, with legal assistance,
- b) a prospect for resettlement, if not for all, at least for greater numbers than now,
- c) local integration, with identity cards, health care, a right to work and a right for children to

go school.

10) Refugee determinations and appeals in both Indonesia and Malaysia are in most cases quite slow, multi year. This is to a certain extent the result of the complexity of the cases. In many of the case, there is a need to consider both inclusion as well as exclusion, that is to say whether perceived LTTE association puts the claimant inside or outside the refugee definition. There are credibility issues which cloud these cases because of the lack of legal assistance and unhelpful rumours about how best to make a claim. Change in circumstances in Sri Lanka means that the Office of the United Nations High Commissioner for Refugees needs to keep abreast of recent developments.

The Office of the United Nations High Commissioner for Refugees is as well understaffed and underfunded. These delays generate an odd result.

Because, in Indonesia, once in detention the authorities get after Office of the United Nations High Commissioner for Refugees to make determinations, detained cases are more quickly determined than non-detained cases. Claimants have an incentive to turn themselves into detention for speedier determinations.

Speedier determination does not just lead to lesser stays in detention. It leads to detentions which might not otherwise exist. The answer is not, of course, slower decisions for those in detention, but rather speedier determinations overall.

11) There are many refugee children in detention in both countries. While neither Malaysia nor Indonesia is a signatory to the Refugee Convention, both are signatories to the Convention on the Rights of the Child.

The Convention on the Rights of the Child provides:

"(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."<sup>3</sup>

These provisions in Indonesia and Malaysia are honoured in the breach. Detention of children is arbitrary. There is no law in either country requiring the detention of children. Children are not detained as a last resort. They are not detained for short periods of time. They can be detained for years, while waiting for the cumbersome processing by Office of the United Nations High Commissioner for Refugees of the refugee claims of their parents.

In the Bali detention centre we visited, children were not systematically separated from adults other than their parents. On the contrary, a prevalent complaint is that they are housed together with single young adult males from other ethnic communities who have little concern for their welfare. They have no right to legal assistance and, in practice, do not have any.

Because both states are signatories to the Convention on the Rights of the Child, they report

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<sup>3</sup> Article 37

periodically to the expert committee established under that Convention, the Committee on the Rights of the Child. That Committee, in response to the most recent periodic report of the Government of Indonesia, wrote in July 2014:

"The Committee is highly concerned about the insufficient protection for asylum seeking and refugee children, in particular about unaccompanied children being left without guardianship and not given free legal representation. Furthermore, the Committee is deeply concerned about the detention of children in immigration detention facilities for months or years, under squalid and violent conditions, without judicial review. It is particularly concerned about:

- (a) Instances of severe brutality by immigration officials and guards experienced and/or witnessed by children;
- (b) the extremely poor conditions in the detention facilities, including overcrowding, inadequate sanitation facilities and insufficient and bad quality food;
- (c) Unaccompanied children frequently detained with unrelated adults and denied the possibility of contacting their families;
- (d) Lack of access to education and only limited access to recreation and health care."<sup>4</sup>

That Committee, in response to the only periodic report of the Government of Malaysia, wrote in June 2007:

"The Committee is particularly concerned that the implementation of the current provisions of the Immigration Act 1959/63 (Act 155) has resulted in detaining asylum-seeking and refugee children and their families at immigration detention centres, prosecuting them for immigration related offences, and subsequently imprisoning and/or deporting them."<sup>5</sup>

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<sup>4</sup> United Nations Document CRC/C/IDN/CO/3-4 10 July 2014

<sup>5</sup> United Nations Document number CRC/C/MYS/CO/1, 25 June 2007

Malaysia ratified the Convention in 1995. Its first report was due 1997. It was filed in 2006. It committed itself by the Convention to report every five years after its first report due 1997.<sup>6</sup> There should have been reports in 2002, 2007 and 2012. There have been no other reports than the report in 2006.

### **Malaysian solutions**

1) The numbers of Sri Lankan Tamil refugees and asylum seekers in detention in Malaysia is small, but those who are in detention are detained without rhyme or reason. They are arbitrarily detained, sometimes for years. There is no reason why any of this population should be detained. They should all be released.

2) At the very least children should be released from detention. The Human Rights Commission of Malaysia or Suhakam Committee in its 2014 Annual Report released in April 2015 observed that

"many unaccompanied children, mostly refuge and asylum-seeking children, were being detained together with adults in the same cell which not only goes contrary to the principle of separate detention, but also puts children at an increased risk of abuse and ill-treatment."

The Commission has been exploring alternatives to detention for unaccompanied minors. In 2014, the Commission presented the initiative to the Minister of Home Affairs who supported it and requested the Commission to work with the Department of Immigration. A working group was formed to study and make recommendations with respect to various alternatives to detention models.

The United Nations Committee on the Rights of the Child recommended in 2007 that

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<sup>6</sup> Article 44

## Malaysia

"Take urgent measures not to detain children in connection with immigration proceedings unless it is necessary to protect their best interests - and then for the shortest time possible, and establish a screening process to ensure that groups with special needs, such as refugees and asylum-seekers, including their children, are rapidly identified;"

The call for urgency in 2007 has to be contrasted with the leisurely manner in which the Government and the Human Rights Commission has addressed the manner. Two years after the Government in 2014 supported in principle alternatives to detention for unaccompanied minors, these children remain in detention. As for children detained with their parents, the matter seems to concern to the Government of Malaysia not at all.

3) The Government of Malaysia should allow Tamil children to attend Tamil schools. The Malaysian Indian Congress is part of the governing coalition. The Deputy Minister of Education P. Kamalanathan is a member of the Central Working Committee of this Congress. The schools have insufficient students for the physical stock and the teacher supply.

4) We attempted to arrange a meeting with the Malaysian Indian Congress but were unable to do so while we were there. At the Parliamentary Caucus there was discussion about a joint approach to the Government of Malaysia of the Caucus and the Malaysian Indian Congress to discuss alleviating the plight of Tamil Sri Lankan Refugees in Malaysia. I went back to Kuala Lumpur on other business in May and attempted to set up a meeting with Deputy Minister of Education Kamalanathan then. He was however not in Kuala Lumpur when I was there.

5) There has been a problem of fraudulent production of UNHCR identity documentation. Sometimes those with UN documentation are arrested pending checks with the UN whether

the documentation is real or fraudulent. These checks can take months before they are complete.

The UNHCR has introduced an internet based card verification system.<sup>7</sup> With the system, Malaysian law enforcers and other authorised personnel can enter the name of a UNHCR document holder and the UNHCR will confirm if the cardholder is genuine.

6) The Government of Malaysia temporarily ran a regularisation of foreign workers program, called the 6p program. The 6ps referred to the six stages of the program - registration, legalization, amnesty, supervision, enforcement and deportation; the Malay word for each begins with the letter "p".<sup>8</sup>

The program met with widespread dissatisfaction because many people paid large registration fees and few people benefited. It was widely viewed as a state sponsored rip off.

As well, the program was not geared to refugees. As noted, the last of the 6ps was deportation. The program expected registrants to have passports and also to go home if they were not working or if there was no need for the work that they were doing or if they were not suitable for the work they were doing.

There is now talk of revival of this program. If it does revive, it would need to be modified substantially to be applicable to the refugee situation. Refugees should not be expected to leave if they do not qualify under the program. They should also not be expected to pay large registration fees.

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<sup>7</sup> <https://verification.unhcr.org.my/>

<sup>8</sup> <http://pmr.penerangan.gov.my/index.php/umum/11359-program-6p.html%20%5B3>

7) Sri Lankan Tamil refugees and asylum seekers should be given Government of Malaysia identification. Their status should be regularised.

Simple security interests suggest that the Government of Malaysia should know who is in the country and where they are. While this particular population poses no particular risks to Malaysia, registration, in general, enhances security.

Ideally refugees should have more than just identity documents. They should have the right to work, to go to school and to health care. They should have the right to stay as long as they are making claims and after they are recognized as refugees. Whether they have those rights raises separate issues from the right to possession of state issued identity documents.

The grant of an identity document is not the same as the grant of status in any form. For Malaysia to have an underground illegal population serves the interests neither of the refugees nor the Government.

8) The Malaysian government has a huge migrant worker population, in the neighbourhood of six million people, more than 40% of its total work force of just under fourteen million. About half the migrant workers or just over three million are illegals, without status. Regularising the status of the Sri Lankan Tamil population would be a drop in the ocean.

The harassment to which Sri Lankan Tamil refugees are subject is more than just pointless. It is actively harmful to Malaysia. The Sri Lankan refugee population is, in terms of the population of Malaysia or those without status in Malaysia, relatively small. Yet, if everyone in Malaysia without status left, the economy of Malaysia would be in big trouble.

Tamil refugees are, to a certain extent, better off than other refugees, because they are not



as visibly foreign as others. The large indigenous Tamil population means that the police may mistake them for locals and not ask for their IDs. They would also, because they are Tamil and there is such a large local Tamil population, more easily integrate into the local community and contribute more effectively than many other refugee populations.

9) The Government of Malaysia agreed not to prosecute refugees and refugee claimants with UNHCR documentation. In principle this agreement should mean that refugees and refugee claimants with UNHCR documentation should not be subject to arrest. But they nonetheless are.

The International Federation for Human Rights (FIDH) and Suaram wrote a report released in March 2008 which stated:

"... persons holding UNHCR documents are generally expected to be protected from arrest and prosecution. This dispensation, albeit informal, derives from written directions issued by the Attorney General in 2005 stating that it would refrain from prosecuting holders of UNHCR documentation. The Immigration Department and the other law enforcement agencies have been less clear in their approach, although general statements have been made, the mission was told, suggesting that the arrest of UNHCR recognised persons should be avoided and that there should be co-ordination with the UNHCR should arrests take place.

In any case, the mission heard from many people from different refugee groups who alleged that they or persons holding UNHCR documentation have been arrested and detained by RELA (a para military vigilante group with the name, in Malaysian The People's Volunteer Corps), or the police. The mission also received a number of allegations that UNHCR document holders have been beaten or otherwise mistreated in custody when they have produced their documentation. ..."

10) There is a simple immediate solution to the problems of this population in Malaysia, the

issuance of IMM13 documents. IMM13 documents are issued on humanitarian grounds and allow the holder to stay, and work in the private, but not the public sector. The holders are allowed to study and access state medical care at the discretion of local authorities. The documents are valid for one year and renewable.

A 2013 report indicates that about 100,000 of these documents had been issued since 1999, mostly to two refugee populations, ethnic Chinese Indonesians who fled during the Sukarno regime and war refugees from the South Philippines.<sup>9</sup> It would be a simple matter to issue these documents to Sri Lankan Tamil refugees and asylum seekers.

11) The Office of the United Nations High Commissioner for Refugees has sponsored a private insurance program for refugees through TUNE insurance. The program seems to be working. However, some people have not signed up for it and then face exorbitant medical costs.

12) Malaysia arrested and deported to Sri Lanka three recognized refugees. These deportations should not have happened. We met the wife and child of one of the deportees. His name is Kirupanathan Selladurai. His deportation was reported in the media under the name Selvthurai Kiribavan.<sup>10</sup> He was arrested at home. At the time, his wife was visibly, eight months, pregnant. He was never brought to court in Malaysia before removal. The wife was given no advance notice of his removal. The husband remains in detention in Sri Lanka.

This deportation was a flagrant violation of customary international law, a law which binds all states, signatories to the Refugee Convention or not. Malaysia needs to offer amends. It

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<sup>9</sup> Daily Express "Why UNHCR holders cannot but IMM13 can?" Saturday, June 27, 2015; Free Malaysia Today "IMM13 documents not issued to illegal immigrants, says Nazri" October 10, 2011

<sup>10</sup> Al Jazeera, "Malaysia criticized for deporting Sri Lankans" 28 May 2014

should request of Sri Lanka the release of all of those refugees it deported to Sri Lanka and offer them visas to return to Malaysia.

13) A regional solution to the problems of this population would, by its very nature, impact all states in the region. However, nowhere is that impact likely to be more dramatic than in Malaysia.

Right now there is the Bali process, which is a regional trafficking and smuggling network. The meetings bring together immigration enforcement officials. The Office of the United Nations High Commissioner for Refugees has attempted to graft on a refugee protection component, with no real result, largely because the wrong people are present.

Regional cooperation focused on refugee protection, local integration and resettlement has to bring together relevant officials and NGOs. Trying to graft on these matters to a regional system addressed to another subject matter is bound to be fruitless.

One result of a proper regional forum focused on refugee protection, resettlement and local integration could be the expansion of the International Organization for Migration program of support for refugees in Indonesia to other states in the region. While the Government of Malaysia, like Malaysia itself, is not poor and does not need this financial support from outside to anywhere near the same extent that Indonesia, the fact remains that money talks.

There need not be one regional mechanism to address the refugee population in the region. There could be several, one for each component of the population. The Sri Lankan Tamil population has its own characteristics and its own solutions. For instance, the large local Tamil populations in India and Malaysia are relevant to a solution to the problems of this refugee population, but not others.

14) The Deputy Prime Minister and Home Minister Ahmed Zahid Hamidi made a statement in November 2015 that the Malaysian government is preparing a proposal paper to implement a pilot project to allow employment opportunities for the Rohingya refugees with recognition cards from the United Nations High Commissioner for Refugees.<sup>11</sup> Such a pilot project for the Rohingyas is all to the good. But there should be equally be such a project for Sri Lankan refugees.

The justification the Minister gave for the proposal was that Rohingyas are stateless. Some Sri Lankan Tamil refugees are also stateless. If statelessness is the justification for this proposal, it should extend at least to those Sri Lankan Tamil refugees who are stateless.

For those Sri Lankan refugees who are not stateless but who are nonetheless recognized as refugees, the justification may be different but there is justification all the same. Many of them are long stayers with no real prospect of return, given the risk they would face on return. They would as well be easily assimilated into the work force and schools in Malaysia because of the large local Tamil population. They are also, in comparison with the Rohingya, a relatively small population whose regularisation would not cause a disruption to either employment markets or the school system.

## **Indonesian Solutions**

1) Proportionately, there are many more refugees in detention in Indonesia than in Malaysia. One reason is that there is no direction from the Government of Indonesia comparable to the direction from the Attorney General of Malaysia to refrain from prosecuting holders of UNHCR documentation. Even more important is the need for refugees to be referred by the Government of Indonesia or the UNHCR to the International

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<sup>11</sup> Malaysian Reserve "Malaysia mulls opening jobs sector for Rohingya refugees" November 18, 2015

Organization for Migration in order to qualify for IOM benefits.

The Sri Lankan immigration detainee population in Indonesia is not in many cases people whom the Indonesian police have arrested. They are often people who have showed up at the prison with their belongings and asked to be lodged there. One reason for this is simply the need for financial support from the state.

It is a lot harder for Sri Lankan Tamils to find work, even illegal work, in Indonesia than in Malaysia, partly because Indonesia is a poorer country than Malaysia and partly because Indonesia has far fewer local Tamils and, consequently, far fewer Tamil employers than Malaysia. The UNHCR reports:

"over the past year UNHCR has been challenged by the increasing number of asylum-seekers and refugees who have self-reported to immigration authorities to be detained because of their inability to financially support themselves."<sup>12</sup>

The primary reason for this voluntary movement into prison is to trigger a referral from the Government of Indonesia to the International Organization for Migration. When this referral occurs is arbitrary. Each Immigration Detention Centre is run as a personal fiefdom by the person in charge. Practices change with detention centres or with changes in the person in charge. There are no rules.

Indonesian law does not require refugee claimants to be detained. Indeed, refugee claimants, in terms of the law, are treated the same as recognized refugees. A regulation provides that either

"may be placed at a certain location with the facilitation of an international organization in charge of matters of refugees [meaning presumably the IOM] or the

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<sup>12</sup> Indonesia Factsheet August 2015

UNHCR".<sup>13</sup>

In Bali, detainees were not released until recognised as refugees by the Office of the United Nations High Commissioner for Refugees. However, not all detention centres functioned that way. In other detention centres, asylum seekers would be released once their claims were registered with the UNHCR.

Indonesia needs a rule based system for detention and release. Beyond that, Indonesia should not be detaining these people at all. Systematic detention of those cooperating willingly with the authorities, of those whose cooperation shows that they are not a flight risk, is both ridiculous and a hardship to those detained.

This whole Indonesian system of detention and referral to International Organization for Migration and then support from International Organization for Migration is driven by Australian fears of boat departures from Indonesia. The detentions are deterrents and the IOM support incentives to prevent this boat movement. This system is anachronistic, in light of Australian relocation of boat arrivals to Nauru and Papua New Guinea.

Sri Lankan Tamil refugees in Indonesia may want to go to Australia. However, they have no desire to go to Nauru or Papua New Guinea. They would prefer to stay in Indonesia.

Another indicator of the lack of need for detention is the no show rate. The UNHCR reports: "In January [2014] the no-show rate for first instance refugee status determination interviews remained low. The rate was 9% in December 2013 and slightly increased

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<sup>13</sup> The Ministry of Law and Human Rights Directorate General of Immigration Regulation IMM-1489.UM.08.05 year 2010 regarding the handling of irregular migrants, Article 3

to 12% in January."<sup>14</sup>

So the need for detention no longer exists.

That is not to say that the need for International Organization for Migration support is equally superseded. On the contrary, this population needs IOM support. Rather than its ending because the risk of boat traffic to Australia has lessened, it should be expanded to other states in the region. Malaysia should have an IOM program of support for refugees akin to the one IOM runs in Indonesia.

2) Even for adults, the treatment of this population in detention is as arbitrary as the fact of detention. Slave labour is a problem in some immigration detention centres. Detainees clean, paint or wash cars, depending on the location where they are detained, regularly and systematically without remuneration. The most they get in return is small favours from their guards. Indonesia needs to set out minimum standards for the treatment of this population in detention.

3) Funding of refugees in Indonesia lacks coordination. The Jesuit Refugee Service (JRS) provides funds to refugee claimants and schooling to refugee claimant children but mostly not to recognized refugees and their children. JRS justifies this policy on the basis that recognized refugees can access other funding and their children can access other schooling. As set out below, this justification is more theoretical than real.

In Cisarua, JRS assisted during 2015 23 Sri Lankan asylum seekers and refugees. In 2014, JRS assisted 38 Sri Lankan asylum seekers and refugees. About 20 asylum seekers and refugee children from Sri Lanka were attending JRS classes in 2015 and 2014.

The Jesuit Refugee Service expects those funded to live near their offices, at Cisarua, Bogor,

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<sup>14</sup> UNHCR Indonesia, Fact Sheet, March 2014

north of Jakarta. Cisarua is a small part of Bogor which has, in the Indonesian context, a local population with an uncharacteristic hostility to refugees.

According to the JRS, Cisarua was since early 2000 the living area of choice for asylum seekers and refugees. Its attraction was its proximity to Jakarta - where the UNHCR has its largest office providing refugee status determination, low living costs, cooler climate and the presence of foreign tourists, making integration of asylum seekers and refugees easier. Be that as it may, the JRS does not provide funding to asylum seekers in Cisarua because that is where they happen to be. Rather presence in Cisarua is a JRS requirement.

Rent is often paid directly by JRS to the landlord. Asylum seekers show up at the JRS office for their monthly assessment.

Refugee recognition should be a positive development, but for many refugees it precipitates a crisis, because their Jesuit Refugee Service funding is cut off. One funding option for refugees is the Church World Service, which is the flip side of the Jesuit Refugee Service. The Church World Service funds refugees but not refugee claimants.

Again there is a location problem. The Church World Service expects the refugees it funds to move to South Jakarta where its offices are. Moreover, its funding to Sri Lankan Tamil refugees, as compared to other refugee populations, is disproportionately small. The Church World Service justifies this differential funding by saying that the Tamil diaspora is wealthier than the diaspora of other populations it is supporting.

This is one of several examples where the theoretical better has become the enemy of the practical good. While it may be true that the Tamil diaspora is wealthier than say the Somali or Afghan diaspora, that differential is no real help to the Sri Lankan Tamil refugees in Indonesia.



Another example is the Office of the United Nations High Commissioner for Refugees justification for not promoting a comprehensive plan of action akin to that for the Vietnamese boat people in the 1980s. Under that plan, states in the region did refugee screening. Screened in were resettled in traditional resettlement countries. Screened out were returned.

The Office of the United Nations High Commissioner for Refugees does not want such a plan now for Sri Lankan Tamil refugees on the theory that states in the region are wealthier now. As well Malaysia and India have large local Tamil populations. States in the region should sign the Refugee Convention. Even if they do not, they should integrate this population locally rather than expect them to be resettled.

That reasoning is fine in theory. But to date, that is all it is, a theory. States in the region are not locally integrating this population.

Because of the defects or limitations in Jesuit Refugee Service and Church World Service funding, the only option for this population, unless they can find outside benefactors or underground work, is the International Organization for Migration. However, as noted, IOM funding requires a referral typically from the Government of Indonesia.

So we get an unusual movement of this population into voluntary detention after refugee recognition in order to be eligible for a referral to the IOM. In Indonesia, refugee recognition does not just lead to release from detention of those already detained. It also leads to detention of those already free.

One reason JRS funds asylum seekers is that otherwise they might have to go into detention to get support, something many of them do once they are recognized as refugees. The

period of voluntary detention would be much longer if asylum seekers could not access support outside of detention. One justification JRS gives for funding asylum seekers but not refugees is that their funding cuts down considerably on the period of voluntary detention. The JRS recognizes the problem that cutting of support to asylum seekers once they achieve recognition has caused and is reviewing this practice.

As well, children go to school while claims are being made, because the parents can afford, with Jesuit Refugee Service (JRS) funding, payment for private schooling. Alternatively they can go to a JRS run school. Once they are recognized and JRS funding is cut off, children have to drop out of school because the funding and the eligibility for attendance at the JRS school disappear. This is another perverse result of the lack of overall funding coordination. There needs to a coordination of these various refugee support programs so that refugees do not have to move from one remote location to another or into detention to get support.

4) Bribery is a problem in Indonesia, but not in the same way as Indonesia. In Malaysia, refugees pay bribes to stay out of prison. In Indonesia, refugees pay bribes to get into prison because they need to be detained for IOM eligibility and to speed up their refugee determinations. Once in, they need to pay bribes to get out of prison, to get Immigration Detention Centre referrals to International Organization for Migration.<sup>15</sup> The amounts exacted are typically small, say in the order of \$200 US. However, for refugees, who have more or less no income or assets, these amounts loom large. Needless to say bribery should not occur. It is particularly pointless when a bribe is being paid for a government service which is unnecessary, voluntary detention.

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<sup>15</sup> See "Barely Surviving; Detention, Abuse, and Neglect of Migrant Children in Indonesia" Human Rights Watch, June 2013, page 59 at

<https://www.hrw.org/sites/default/files/reports/indonesia0613webwcover.pdf>

5) The Government of Indonesia, we were told, has proposed legislation on refugees, a Presidential bill. When we asked to see the proposal, we were referred by the Government official with whom we met, to the website of Ministry of Law and human Rights. We could not locate the bill on the website or anywhere else, or find even a reference to it, anywhere. We made several requests by e-mail to different officials either for the bill or a link to the bill, but received no response from any of the officials contacted.

**Conclusion**

The Sri Lankan Tamil refugee population is resilient and adaptable. They have managed to make the best of a bad situation. The situation in which they find themselves is both illogical and inhumane. Implementation of the solutions this report recommends would go a long way towards alleviating their situations.

Before that can happen, the situation has to be confronted for what it is. All refugees have only three basic solutions - repatriation, resettlement or local integration. For the bulk of the Sri Lankan Tamil refugee population in the region, the only viable solution, because of continuing human rights violations in Sri Lanka and the small number of settlement spots available, is local integration. Sri Lankan Tamil refugees in the region are, for the most part, not going anywhere. Everyone addressing this population needs to adopt policies based on this fact.

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David Matas is an international human rights lawyer based in Winnipeg, Manitoba, Canada.