



THE Home Minister Datuk Seri Hishamuddin Hussein, in his statement on the asylum swap, reported today (Star N10 Nation 18 May 2011) between Malaysia and Australia is a pioneering and cutting edge solution to tackle people smuggling. He further added that this new approach would confidently combat human trafficking.

Tenaganita, an organization that has worked for the last 15 years on human trafficking and on refugees cannot understand nor recognize how an asylum swap framework of agreement will combat human trafficking. The Home Minister seems to put all issues into one basket. Asylum seekers and refugees are different. Refugees are people fleeing for safety to protect their lives resulting from persecution.

While it is true that they can be vulnerable to being “smuggled” or be trafficked at some stage but we cannot deny them their right to land and be protected.

However, the asylum swap talks is about refugees who are already in Australia and who will be deported to Malaysia which is seen as a country that is hostile to refugees and treats them as illegal immigrants with no right to work, education and open to arrest and detention.

This deportation of 800 refugees is a gross violation of their rights and the principle of non refoulement guaranteed under the UN Convention on Refugees to which Australia is a signatory. Central to the issue is protection of rights of refugees that cannot be compromised. It is the rights approach that the Home Minister does not address nor recognize at all in the deal. And Australia must hold to its state obligations and ensure the protection of rights of refugees and their integration into Australian society.

The Minister's position can be further argued as we look into Malaysia's human rights record. Malaysia holds a very weak record of its commitment to protection of rights is clear. It has not ratified basic Conventions like against Torture and the Universal Declaration of Human Rights. (ICCPR and ECOSOC). It is not a signatory to the UN Convention on Refugees and many more international instruments. Thus the Malaysian government is not obligated to protect rights nor can be it be made accountable by the international community nor by Australia. Diplomatic assurances do not provide any confidence especially when legal measures for rights protection are not in place in Malaysia while its environment being a dangerous condition to life even life threatening situation for refugees.

The agreement seems to turn Malaysia into a processing centre and an interceptor for boats thus barring refugees from landing in Australian territory. Australia on the other hand is passing its internal problems of refugee protection and growing xenophobic reactions to Malaysia. If this is what the deal will be, how can the Home Minister argue it will address human trafficking?

The incidence of human trafficking in the country is extremely high with investigations being weak. The rights of the victims or survivors of human trafficking are still unrecognized and civil society does not have access to victims after they are rescued. The legal framework and policies for migrant workers continue to place them in highly exploitative conditions that result in human trafficking. We would like to remind the Home Minister to begin the change in our backyard and ensure the root cause of human trafficking in the country is addressed before becoming an interceptor for another country.

We call on the Home Minister to stop pulling wool over our eyes and demand transparency into the agreement and the implications for Malaysia. Even if it addresses the issue of human trafficking, central to it, is the protection of rights of refugees and asylum seekers. The rights framework is absent and thus it is totally rejected as a “good” initiative.

Before any such initiative or agreements are made, Malaysia must change the legal framework, ratify the Convention on Refugees and show its commitment to rights protection with humanitarian support for asylum seekers and refugees.

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