

Provision of Legal Aid for Asylum-Seekers,  
Refugees, and Others Forcibly Displaced in Asia

# Country-Level Memorandum: Malaysia



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## **STATE FUNDED LEGAL AID**

State-funded legal aid in Malaysia is provided primarily by the Legal Aid Department (LAD), which was established in 1970 to provide legal assistance, advice and mediation services to lower income groups in the country. Its operations are regulated by the Legal Aid Act 1971 and various supporting regulations.

In 2012, the Malaysian government also launched the National Legal Aid Foundation (NLAF) to assist individuals detained for criminal offences at every stage of the process (i.e., arrest, remand, charge, bail, mitigation, representation at trial). Lawyers that assist in providing these services are remunerated by the State.

### ***Eligibility, Nature and Scope***

#### Eligibility of Asylum-Seekers, Refugees and Stateless Persons

While assistance from the LAD was previously available to any person ‘resident and present in Malaysia’<sup>1</sup>, this provision was amended to ‘citizen of Malaysia’ pursuant to section 8(a) of the Legal Aid (Amendment) Act 2017. Accordingly, members of the Target Group<sup>2</sup> are not eligible for any assistance from the LAD.

State legal aid under the NLAF is available only to Malaysian citizens and children under 18 (regardless of nationality and immigration status) in relation to criminal offences. This means that only members of the Target Group that are under the age of 18 and who are charged with a criminal offence have access to the NLAF, leaving a big gap in unmet need in terms of state-funded legal aid, given that there are about 180,000 refugees and asylum-seekers in Malaysia registered with the UNHCR (as defined below) as of the end of January 2021.<sup>3</sup>

#### Scope of State Funded Legal Aid

State legal aid in Malaysia does not cover any asylum-related matters unless it involves alleged criminal offences committed by children under the age of 18. In such a situation, a court has the jurisdiction to entertain an ancillary request for asylum (although we are not aware of such applications in practice).

Although it is only available to citizens of Malaysia, and therefore not available to members of the Target Group, legal aid from the LAD covers the following matters:

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<sup>1</sup> Legal Aid Act 1971, section 29(1)

<sup>2</sup> The Target Group consists of asylum-seekers, refugees and stateless persons.

<sup>3</sup> <https://www.unhcr.org/en-us/figures-at-a-glance-in-malaysia.html>

- All criminal proceedings in which the accused is not represented by counsel and pleads guilty and wishes to make a plea in mitigation; and certain statutory offences against children.<sup>4</sup>
- Certain civil proceedings, such as divorce and child custody, adoption, probate matters, road accidents, tenancy disputes, etc.<sup>5</sup>
- Certain Syariah court proceedings, such as divorce, child custody and marital debts.

The NLAFF provides assistance in relation to criminal matters at all stages of proceedings: arrest, remand, mitigation, bail and trial (subject to a means test of annual income not more than RM 36,000, which is about USD 9,000). However, in the case of individuals that are not citizens of Malaysia, such as members of the Target Group, such assistance is available only to children under the age of 18.

### Eligibility Criteria

Please see the section on '[Eligibility of Target Group](#)' above. In addition:

- Any person that pleads guilty in a criminal matter and seeks a plea in mitigation is entitled to legal assistance under the LAD. This includes members of the target group over the age of 18 (i.e., both Malaysian and non-Malaysian citizens).
- In relation civil matters, the Legal Aid (Criteria and Means Test) Regulations 2017 provides that a person's eligibility for legal aid is subject to a means test based on his or her yearly financial resources.

No exceptions are made with respect to the eligibility requirements as regards members of the Target Group, other than in relation to the NLAFF, which provides assistance to members of the Target Group if they are below 18 years of age in relation to criminal matters.

### ***Structure and Procedures***

#### Process for Obtaining State Funded Legal Aid

An individual seeking legal aid from the LAD will have to attend one of the LAD centres in Malaysia, satisfy a means test (if it involves a civil matter) and provide the following documentation (to the extent applicable):

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<sup>4</sup> Legal Aid Act 1971, Second Schedule.

<sup>5</sup> Legal Aid Act 1971, Third Schedule.

- Identity card;
- Original marriage certificate / divorce certificate;
- Divorce order;
- Child's birth certificate;
- Details of employment;
- Name of employer;
- Certificate from employer;
- Statement of salary;
- Medical report;
- Police report;
- Witness information;
- Claimant residency verification; and
- Any relevant documents.

There are three main ways of obtaining legal aid under the NALF scheme:

- Visit any of the legal aid centres in the country and provide the necessary information (similar to the documentation for the LAD above). If a person is seeking representation at trial, he or she will have to pass a means test to qualify (i.e., have an annual income not exceeding MR 36,000 or USD 9,000). There is no need to satisfy a means test in relation to arrests, remand, bail and mitigation given the urgency of these proceedings.
- Every fortnight, lawyers with the NALF go to prisons in Malaysia to conduct interviews with those awaiting trial, etc., to offer advice and assistance.
- Court staff or lawyers may write directly to the NALF seeking assistance on behalf of detained persons.

Once an individual is found to be eligible for legal aid (which in the case of the Target Group is limited to a child under the age of 18 charged with a criminal offence), s/he has no obligations, apart from filing fees and disbursements.

#### Process for Providing State Funded Legal Aid

Legal aid is provided by members of the Bar based on a roster system.

#### Financing of State Funded Legal Aid

Legal aid is financed solely through the annual allocation of federal funds from the State.<sup>6</sup>

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<sup>6</sup> Andika Wahab, Aizat Khairi, *Right to justice and legal aid barriers to vulnerable non-citizens in Malaysia*, Malaysian Journal of Society and Space (February 2020), page 19.

## ***Barriers***

### Availability of Interpretation/Translation Services

An interpreter will be provided in the course of legal aid. If a detained individual does not understand the court proceedings and the charges against him or her, such proceedings will be put on hold until a suitable interpreter is found.

### Geographic Limitations

There are no geographical limitations for assessing legal aid as there are LAD and NALF centres in every state in Malaysia, including in rural areas.

### Other Barriers

In addition to citizenship requirements discussed above, other barriers to accessing legal aid may include lack of awareness of the options available, lack of national funding and an insufficient number of lawyers to staff and assist the LAD and NALF.

## **NON-STATE FUNDED LEGAL AID**

The Malaysian Bar Council established its Legal Aid Centre (LAC) in 1982, which is fully staffed (on a pro bono basis) and funded by Bar Council members. The LAC offers legal advice, representation and intervention in civil and criminal matters for marginalised, underprivileged and disadvantaged persons, regardless of nationality.

Other non-governmental organizations (NGOs) in Malaysia (such as Asylum Access), which are privately funded through donations, etc., also provide ad hoc support to those in need.

## ***Eligibility, Nature and Scope***

### Eligibility of Asylum-Seekers, Refugees and Stateless Persons

Members of the Target Group are able to obtain assistance from the LAC and from NGOs for asylum-related matters, to the extent that these matters can be resolved via the court procedures.

### Scope of Non-State Funded Legal Aid

Members of the Target Group are able to obtain non-state funded assistance, to the extent that these matters can be resolved via court procedures. An example of a matter

not covered by court procedures would be an individual's refugee status, which is determined by the United Nations High Commissioner for Refugees (UNHCR) and is not subject to judicial review by the Malaysian courts.<sup>7</sup>

Examples of asylum-related matters covered include assisting asylum-seekers to navigate the asylum system in Malaysia, assert their rights to education and healthcare, and obtain access to employment.<sup>8</sup> In March 2021, a Malaysian court granted Amnesty Malaysia and Asylum Access Malaysia permission to challenge the deportation of 1,086 Myanmar nationals that were seeking asylum in Malaysia. The ruling paved the way for a full hearing on legality of the deportations, which remains under way as at the date of this memorandum.<sup>9</sup>

Members of the Target Group are also able to access non-state funded legal aid for non-asylum related matters, such as general civil and Syariah law matters,<sup>10</sup> criminal matters and public interest litigation (e.g., land rights of aboriginals).<sup>11</sup>

### ***Structure and Procedures***

There are generally no restrictions on those providing legal services, except those which would apply to any court proceedings (i.e., a person representing a member of the Target Group would have to be called to the Bar and have a valid practicing certificate, etc.).

Pupils-in-chambers are allowed to provide pleas of mitigation for detained persons that have pleaded guilty.

### Process for Obtaining Non-State Funded Legal Aid

The process for obtaining non-state funded legal aid in relation to the LAC is similar to the NALF. Please see the '[Process for Obtaining State-Funded Legal Aid](#)' section above.

The process in relation to NGOs providing legal aid is ad hoc, and will depend on each case.

As noted above, the Target Group is eligible for assistance from the LAC (and certain NGOs), even if there is a lack of identity documents.

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<sup>7</sup> Andika Wahab, Aizat Khairi, *Right to justice and legal aid barriers to vulnerable non-citizens in Malaysia*, Malaysian Journal of Society and Space (February 2020), page 16.

<sup>8</sup> <https://asylumaccess.org/what-we-do/legal-empowerment/>

<sup>9</sup> <https://www.reuters.com/article/us-myanmar-politics-malaysia-idUSKBN2B10A7>. The latest status of the matter was confirmed by Hui Ying Tham, Director of Asylum Access Malaysia during a follow up interview on 3 January 2022.

<sup>10</sup> <https://www.kllac.com/lac-program/>

<sup>11</sup> <https://www.malaysianbar.org.my/article/news/legal-and-general-news/members-opinions/legal-aid-in-malaysia-the-need-for-greater-government-commitment>

## Funding for Non-State Funded Legal Aid

The LAC is funded by the Bar Council Legal Aid Fund, which is in turn funded by Bar Council members. The NGOs are privately funded.

## **Barriers**

### Availability of Interpretation/Translation Services

Since access to non-state funded legal aid is usually provided on a voluntary basis (with the LAC staffed by lawyers working on a pro bono basis), there may be language barriers, depending on who is on duty. However, the LAC works closely with UNHCR and various interest groups to provide interpretation where necessary.

### Geographic Limitations

There are no geographical limitations impacting on access to non-state-funded legal aid. There are LACs in every state in Malaysia, including in rural areas.

### Other Barriers

Other barriers to accessing legal aid services include a lack of volunteers, funding and awareness of such services.

## **SOURCES**

Interviews with:

- Hui Ying Tham, Director of Asylum Access Malaysia  
([huiying.tham@asylumaccess.org](mailto:huiying.tham@asylumaccess.org))
- Collin Andrew, former Chair of Bar Council Legal Aid Committee  
([collinlawchambers@gmail.com](mailto:collinlawchambers@gmail.com))



This document is part of a collaborative, multi-jurisdictional research project on the availability of legal aid to refugees in Asia for use by refugees, other displaced people, and the lawyers and organizations that work with them. It was compiled by Dechert and provides information on both state and non-state funded legal aid in Malaysia.

Law firms participating in this research are not liable toward third parties for the accuracy of the general information contained in this guide. The memorandum is not intended to provide, nor should it be relied on, as legal advice. Legal advice should be sought for any specific individual circumstance. If you find any inaccuracies in this document, please inform PILnet at [grfpledge@pilnet.org](mailto:grfpledge@pilnet.org).

If you are an individual seeking further information and contact details about legal aid providers in Malaysia, please see the country page for Malaysia on [Rights in Exile](#) or [UNHCR's Help](#) platforms.

If you are an organization seeking to be matched with free legal assistance for your organization or your refugee clients, please click [here](#) to learn more about [PILnet's Refugee Legal Assistance Matching Mechanism](#).