

NATIONAL ACTION PLAN MALAYSIA

What is the UNHCR Global Strategy - Beyond Detention?

In June 2014, UNHCR launched its Global Strategy - Beyond Detention 2014-2019, which aims to support governments to end the detention of asylum-seekers and refugees. The Strategy lays out three main goals: (1) to end the detention of children; (2) to ensure that alternatives to detention (ATDs) are available in law and implemented in practice; and (3) to improve conditions of detention, where detention is necessary and unavoidable, to meet international standards. To support the implementation of the Global Strategy, focus countries have developed National Action Plans ('NAP'). This document is a summary and public version of the NAP.

All documents relating to the Global Strategy - Beyond Detention 2014-2019 are available at: <http://www.unhcr.org/detention>

The process of developing the National Action Plan

For several years UNHCR Malaysia has advocated with the Malaysian authorities to introduce alternatives to detention for UNHCR's persons of concern. This has been part of a larger effort to promote a national refugee law and policy in Malaysia which is presently absent as part of the domestic legal framework. The National Action Plan was drafted in consultation with a number of stakeholders including the Malaysian Bar Council, the Human Rights Commission of Malaysia (SUHAKAM), the Prime Minister's Department for Human Rights, and several NGO partners including SUKA Society and other members of a locally established working group on detention issues. Consultations within UNHCR Malaysia and with Headquarters also assisted in the process.

The actions foreseen

Goal 1. End the detention of children

Malaysia is a party to the 1989 UN Convention on the Rights of the Child. However there are no specific provisions in Malaysian law to exempt asylum-seeking and refugee children from the provisions of the *Immigration Act 1959/63*. To achieve Goal 1, key actions include carrying out a review of current policies and laws on detaining children and conducting participatory assessments (PA) with existing stakeholders to identify best practices and make recommendations for a legal policy and framework applicable to asylum-seeking and refugee children under the *Immigration Act* and the *Child Act 2001*. UNHCR will continue to intervene with the Malaysian immigration enforcement authorities and in judicial processes to secure the release of detained children. Through engagement with the Malaysian Bar Council and concerned NGOs, the Office will conduct awareness training on children's rights. UNHCR is also engaging the Malaysian authorities to standardize processes of handling children at the point of arrest and to advocate for ATDs for children. UNHCR is working with immigration and police enforcement agencies and relevant stakeholders to raise awareness of detention issues and to advocate for and advise on child sensitive procedures and assessments. The Office is also engaging with the Malaysian Social Welfare Department and National Legal Aid Foundation to extend their services to refugee children.

Malaysian NGOs continue to engage with relevant stakeholders to advocate for ATDs and the consideration of specific needs of vulnerable groups in detention. Currently, UNHCR Malaysia is consulting with a child-based NGO on an ATD project in the form of a temporary shelter (ATD Shelter) to house UASC currently being held in immigration detention centres and those picked up during raids on immigrant communities and workplaces.

Goal 2. Ensure that alternatives to detention are available in law and implemented in practice

To achieve Goal 2, key actions will include awareness-raising and campaigning on the UNHCR *Guidelines on the Applicable Criteria and Standards relating to the detention of asylum-seekers and Alternatives to Detention* (2012) with concerned Malaysian authorities such as

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A global strategy to support Governments to end the detention of asylum-seekers and refugees



the Department of Immigration and the Royal Malaysian Police. Through regular visits to immigration detention centres conducted by UNHCR staff for registration purposes, the Office is able to secure the release of persons of concern and engage with the authorities to identify vulnerable individuals and those most in need of support.

UNHCR will engage with the authorities and other stakeholders through capacity building opportunities and workshops, for example, to develop and establish standard operating procedures (SOPs) on detention and referral and identification mechanisms of persons with heightened risks (i.e. persons with physical and/or mental disabilities, illness, UASC, at risk children).

Goal 3. Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards

UNHCR will continue to support the Malaysian Government to improve detention conditions in order to meet domestic and international standards through the regular sharing of recommendations based on its monitoring of immigration detention centres. To this end close cooperation will be organised with the Malaysian authorities including the Ministry of Home Affairs, as well as SUHAKAM, the Malaysian Bar Council and NGO partners. In close cooperation with SUHAKAM, UNHCR will offer to the Government to organise a roundtable discussion on conditions of detention.

Detention overview

There is no domestic refugee law or policy according protection of or legal stay for refugees and asylum-seekers in Malaysia. Asylum-seekers fall into the category of “illegal migrants” and they remain at risk of arrest, detention, prosecution, imprisonment and other criminal sanction (including caning) and deportation if not identified, registered and granted protection by UNHCR. There is an absence of law/regulation guaranteeing non-detention of asylum-seekers and refugees in Malaysia, except for a general instruction not to prosecute registered asylum-seekers and refugees. UNHCR is aware of inconsistencies in practice.

Administrative decisions to detain a foreigner, which could include a refugee registered by UNHCR, are not based on a detailed and individualised assessment of the necessity to detain an individual. The provisions of the *Immigration Act* create a strict liability offence for persons in the country without authorization, which could include registered refugees. Detention under the Act does not provide for periodic review of the decision to detain, leading to an indefinite period of time in detention. Section 59A notes there are no options for judicial review for any act done or any decision made by the Minister or the Director General under this law, except in regard to compliance with a procedural requirement or the regulations governing the Immigration Act. Children may be separated from their families and detained with unrelated adults. Furthermore, due to the increase in the number of detainees in Immigration Detention Centres across the country, there are challenges in addressing basic needs, for example, nutritious food, sanitation, overcrowding, and lack of access to medical services. UNHCR is exploring ways to engage entities dealing with administrative review of such issues and SUHAKAM in particular has been active in carrying out visits to immigration detention centres throughout Malaysia.

In 2011, the Malaysian Bar Council outlined a proposal on “*Developing a Comprehensive Policy Framework for Refugees and Asylum Seekers*”, which includes drafting a legal and administrative framework for dealing with asylum-seekers and refugees. More recently the discussion to adopt a legal and policy framework for refugees has been given new impetus as result of the arrival of boats carrying Rohingya asylum-seekers in Malaysia.

Good practices and alternatives to detention

Among the positive practices in Malaysia is an administrative instruction issued to avoid the detention of asylum-seekers. Upon arrest, first line officers, such as police and immigration officers, are to confirm the identity and status of the persons through an on-line database and call centre services. The latter includes a hotline service managed by UNHCR Malaysia. If the person appears to be registered with UNHCR, he/she is to be released.

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