

# Malaysia

## PROGRESS UNDER THE GLOBAL STRATEGY BEYOND DETENTION 2014-2019, MID-2016

**IN MALAYSIA**, in the absence of domestic law granting protection or legal stay, asylum-seekers and refugees remain at risk of arrest, detention, prosecution, imprisonment, deportation and *refoulement*. In 2014 and 2015, the record number of refugees and migrants who arrived by boat in the Bay of Bengal and Andaman Sea and the discovery of mass graves along the northern border, resulted in enhanced scrutiny being placed on traditional departure and arrival points. Law enforcement operations undertaken against ‘illegal migrants’ and smugglers across the country led to the arrest and detention of large numbers of persons of concern, particularly those not yet registered with UNHCR. During these operations, UNHCR was often requested to identify registered persons of concern and upon verification of their status, many of these individuals were released without being prosecuted.<sup>1</sup> However, in 2015, 5,648 asylum-seekers and 2,282 refugees were detained and faced prosecution for immigration-related purposes.

The National Action Plan (NAP) was drafted in consultation with a number of stakeholders including the Malaysian Bar Council, the Human Rights Commission of Malaysia (*SUHAKAM*, the National Human Rights Commission of Malaysia), the Prime Minister’s Department for Human Rights, and several NGO partners including *Persatuan Kebajikan Suara Kanak-kanak Malaysia (SUKA Society*, a national child protection NGO) and other interlocutors. In October 2014, UNHCR established a joint UNHCR-NGO working group on arrest and detention to improve information sharing, partnership-building and coordination between organisations involved in detention monitoring, service provision or other activities related to immigration detention. The working group meets on a bi-monthly basis and includes *SUHAKAM*, the International Detention Coalition (IDC), the Malaysian Bar Council and the International Committee of the Red Cross (ICRC).



## KEY DEVELOPMENTS

- Establishment of a formal working group on alternatives to detention (ATDs) for unaccompanied children (UASC) by the Immigration Department with *SUHAKAM*, (National Human Rights Commission of Malaysia) and relevant government and non-governmental organisations. A technical sub-committee of the working group has been tasked with exploring and addressing legal and technical barriers to the implementation of a proposed ATD model for UASC.
- Release of 13,829 persons of concern from detention during the reporting period following UNHCR interventions. Of these, 1,491 children were prioritised for registration and released from detention.
- Decrease in the number of children detained in immigration detention centres as observed by UNHCR detention monitoring.

<sup>1</sup> A Circular issued in 2005 by the Attorney General’s Chambers provides some degree of immunity to asylum-seekers and refugees registered with UNHCR from prosecution for immigration charges.

## Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

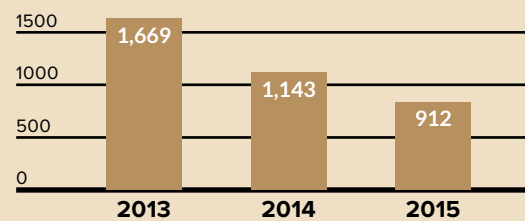
During the implementation phase of the Global Strategy, the office established an **internal protection referral system** which facilitates inter-unit referrals, including for detained individuals. UNHCR detention focal points were trained in the system and used it regularly to refer cases to the Child Protection and Community Liaison Units (CLU) to request shelter placements or the tracing of family members for unaccompanied or separated children (UASC) upon release from immigration detention. In 2015, UNHCR also developed a **partner-referral system** which raised awareness amongst the NGO partners about the office's protection activities and how to identify and refer vulnerable individuals to UNHCR for these services. All working group members were trained on the new system, including to facilitate the identification and referral of detained asylum-seekers and refugees, as well as those at heightened risk of arrest and detention.

UNHCR Malaysia developed a new ID card and biometric data collection system for asylum-seekers and refugees which will be accompanied by a smartphone application to allow police and immigration enforcement officers to immediately verify whether an individual is registered with UNHCR. This will support the implementation of ATDs for such individuals, including by contributing towards the avoidance of their criminal prosecution for illegal entry under the *Immigration Act*,<sup>2</sup> in accordance with an Attorney General's Circular issued in 2005. Following positive discussions with the authorities, UNHCR will undertake nation-wide training for enforcement authorities on this status verification mechanism.

<sup>2</sup> Malaysia: *Immigration Act*, 1959-1963, 1 May 1959, available at: <http://www.refworld.org/docid/3ae6b54c0.html>

### GOAL 1 End the detention of children

#### NUMBER OF CHILDREN DETAINED



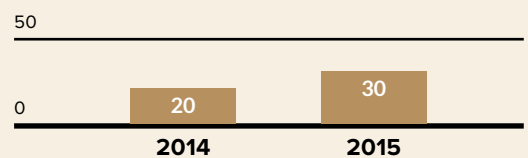
This figure refers to asylum-seeking and refugee children detained, who were registered with UNHCR prior to or during immigration detention.

Source: UNHCR registration database.

⊘ Legal framework does not ensure that children are not detained.

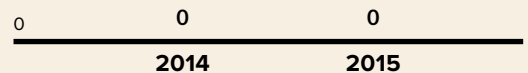
### GOAL 2 Ensure that alternatives to detention (ATDs) are available

#### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



This is an approximate figure of the existing places available in the NGO shelters for UASC released from detention.

#### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



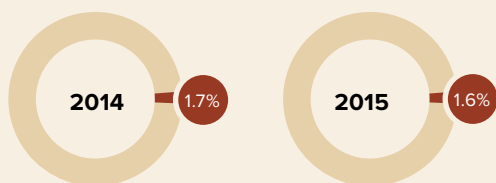
TYPES OF ATDs: <sup>3</sup>	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	☑	☑	☑
Directed residence			
Residence at open/semi-open reception/asylum centres <sup>4</sup>	☑	☑	☑
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements			

☑ available in legislation    ☑ used in practice

<sup>3</sup> While available in law, these ATDs are seldom applied in practice to the benefit of asylum-seekers and refugees.

<sup>4</sup> Upon registration by UNHCR in detention, UASC under the age of 16 are generally released into NGO-run shelters.

**PERCENTAGE OF PERSONS IN ATDs  
(out of total number of persons detained)**



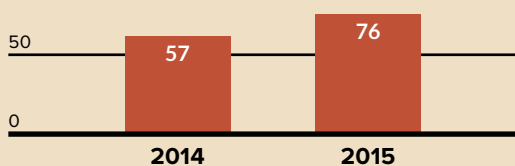
This figure refers to UASC who were released into temporary care arrangements (generally NGO shelters) following a period of detention, extracted from the number of registered asylum-seekers and refugees detained for immigration-related purposes during the period.

Source: UNHCR registration database

- ⊘ No mechanism allowing asylum-seekers to stay legally in the community.
- ⊘ When residing in the community, asylum-seekers do not have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance).
- ⊙ Case management\* is partially provided in ATDs: the shelters to which UASC are released following UNHCR's intervention are developing case management, supported by the NGO *Suka Society*.

**GOAL 3 Ensure that conditions of detention meet international standards**

**NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)**



- ⊘ Malaysia is not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

**LEGEND:** ⊙ Yes ⊘ No ⊙ Partially

N/A Not available U Unknown

**SOURCE:** All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

\* See UNHCR *Detention Guidelines*, p.44.

Children in detention were **prioritised for registration by UNHCR in order to ensure their early release** into the care of the community (for UASC aged 16 years and over) or into shelters (for those under the age of 16). From June 2014 to December 2015, 1491 children in detention were prioritised for registration and 150 children were released into shelters. UNHCR also conducted relationship verification for separated children and family tracing in order to facilitate family reunification upon release.

UNHCR ran a call-centre (during office hours) and a hotline (outside office hours). These services enabled persons of concern and the broader public to report arrests and supported enforcement authorities to request UNHCR to verify the status of arrested individuals in order to facilitate their release from detention. Through these mechanisms, when notified of the arrest of asylum-seeking children, UNHCR was able to provide verification of the children's status and request their release into UNHCR's care. Successful **advocacy interventions** led to the release of 143 children from custody, prior to being sent to detention centres. Where such children faced prosecution under Malaysian law, with the assistance of legal counsel, UNHCR also intervened on the children's behalf to secure their release through the court system.

Although UNHCR Malaysia is not part of the formal working group on ATDs for children led by the Immigration Department, the office supported the pilot ATD shelter project through **capacity-building initiatives for potential ATD shelter providers**, including linking them with child protection specialists and existing child shelter providers. UNHCR also supported the development of a case-management system, led by *SUKA Society*, designed to strengthen the ATD pilot project. This system aims to improve the existing Child Protection network and referral system to improve coordination of the case management of UASC upon their release from detention and for those at risk of arrest and detention. UNHCR engaged with a number of relevant Child Protection actors from within the network, including funding a partner organisation, the Good Shepherd Welfare Organisation (PKGS) to identify and coordinate shelter arrangements for persons of concern.



#### TRAININGS ORGANIZED IN MALAYSIA DURING THE REPORTING PERIOD

3 on Child  
protection

2 on Attention to  
vulnerable groups

#### NUMBER OF PERSONS TRAINED IN MALAYSIA DURING THE REPORTING PERIOD

116 on Child  
protection

120 on Attention to  
vulnerable groups

## Gaps and challenges

Asylum-seekers, refugees and other persons of concern are frequently detained in immigration detention centres in Malaysia, where they endure challenging physical conditions, including overcrowding. In this environment, detainees are unable to access the psycho-social support they need, which has a particularly negative impact on vulnerable detainees, including UASC and victims of sexual and gender based violence. Without a maximum period of detention or formal administrative or judicial channels to challenge their detention, detainees face the risk of long-term or even indefinite detention. A major gap is the absence of an independent and effective regulatory body to monitor the conditions and basis for immigration detention, where asylum-seekers and refugees are frequently held.

In the absence of a legal framework to regulate the status of refugees and asylum-seekers in Malaysia, UNHCR relies on well-understood, albeit *ad hoc*, arrangements with the detention facilities and respective Ministries to undertake regular visits, registration, refugee status determination and detention monitoring. In practice, UNHCR enjoys good cooperation from authorities during its visits to many of the detention centres but in the absence of formalized agreements, access is not always granted to all areas of the facilities nor to all individuals. This limits UNHCR's capacity to monitor conditions of detention and the well-being of persons of concern and to formulate recommendations accordingly. NGOs also face difficulties in regularly accessing detention centres.

## Next steps

In the next phase of the implementation of the Global Strategy, UNHCR Malaysia will continue to undertake identification and registration activities in immigration detention centres, as well as status verification with enforcement authorities to facilitate the release of asylum-seekers and refugees. The office will conduct training on UNHCR's role and the new UNHCR identity cards with national enforcement authorities, in order to raise awareness on asylum issues. It will also undertake training around existing ATDs for the judiciary and prosecuting authorities, including the Attorney General's Circular which provides a degree of protection to asylum-seekers and refugees from prosecution. Finally, UNHCR Malaysia will continue its dialogue with the Government on the possibility of conducting joint registration of asylum-seekers and refugees, establishing ATDs for children and other persons of concern to UNHCR, improving detention conditions and developing a legal and policy framework that better protects asylum-seekers and refugees, including from immigration detention.

For more information, please contact Brian Gorlick, [Gorlick@unhcr.org](mailto:Gorlick@unhcr.org).  
UNHCR Malaysia, August 2016.