



COUNTRY OPERATIONS PLAN

Executive Committee Summary

Country: Malaysia

Planning Year: 2005

Part I: Executive Summary

(a) Context, Beneficiary Populations and Themes

1. In 2003, the UNHCR Representation in Malaysia registered 14,747 new asylum seekers compared to a total of 2,513 asylum claims in 2002. The asylum level in Malaysia is comparable to the one in the Netherlands, Belgium and Norway.
2. Malaysia is not a party to the 1951 Convention and the 1967 Protocol and has not enacted domestic refugee legislation. In other countries registering large number of individual asylum claims, asylum seekers are in the good hands of dozens of government eligibility officers and dozens of supporting staff. They are entitled to various forms of assistance and support from many parallel State institutions, belonging to different ministries. They receive legal representation and psycho-social counselling from a vibrant and dedicated NGO community, sometimes funded by the government. They have legal status both as asylum seekers and refugees and have legal remedies at their disposal.
3. In sharp contrast, both refugees and asylum seekers are considered as illegal immigrants in Malaysia. As such, they are subject to harassment by the police, arrest, detention, deportation (amounting to *refoulement* in some cases) and possibly caning. In August 2003, after some 300 asylum seekers, mainly from the Indonesian province of Aceh, had been arrested by the Malaysian police in front of the UNHCR office, the UNHCR Representation in Malaysia established a permanent "Detention Unit", composed of one international and three national staff. From end of August 2003 to 10 March 2004, the Detention Unit offered counselling and medical treatment (through an implementing partner), and – when necessary and with the help of the Refugee Status Determination (RSD) and Resettlement Units - RSD and resettlement interviews to 813 detained asylum seekers and refugees. In addition, they obtained the release of 99 persons of concern and prevented the deportation of 574 persons of concern. In early 2004, UNHCR noticed that the number of arrest and detention of persons of concern was on the increase and had reached some 40 persons per week.¹
4. Out of the 14,747 new asylum seekers in 2003, 5,654 Indonesians from the province of Aceh were recognised as a group in need of temporary protection and were individually issued, after verifying that they were "ethnic Acehnese", genuinely civilians and had not committed excludable crimes, Temporary Protection Letters (TPL). The rest (9,093 persons) were prioritised for RSD. In addition and as part of a separate process undertaken by the Malaysian NGO ABIM, acting under the close supervision and as an implementing partner of UNHCR, a total of 8,979 Rohingya from Myanmar² were registered and issued TPL. Being both a seriously discriminated and stateless minority, the Rohingya are considered as a group of concern to UNHCR. Most of the Rohingya registered by ABIM / UNHCR arrived in Malaysia in the early 1990's. Since then, they have lived in limbo, without legal status and constantly at risk of being harassed, arrested and deported to Thailand, with possible chain *refoulement* to Myanmar. Finally, the office had an almost "non-active"

¹ The number may not have increased, but the increase may rather be linked to the fact that UNHCR, by establishing a Detention Unit, has seriously upgraded its monitoring capacity and can now detect cases that were unnoticed in the past.

² It is important to reiterate that the 8,979 Rohingyas were **in addition to** the 14,747 asylum seekers.

caseload of 57,194 Filipinos, living in the state of Sabah since the 1970's and whose stay has been regularised by the authorities, at least for the vast majority of them.

5. Given the backlog already existing at the end of 2002, an average no-show rate of about 30% and the fact that the asylum seeker population is predominantly (90%) composed of single males, the RSD backlog was some 5,600 cases on 29 February 2004.³
6. The major positive development during the second half of 2003 was that, unlike previous years, UNHCR was finally able to convince five NGOs not only to work for refugees and asylum seekers⁴ but to formally enter into sub-agreements with UNHCR⁵. The implementation rate was logically quite low in 2003, since agreements were only signed in October 2003, and NGOs were not used to working with UNHCR and had some concern about working in a legally grey area. In addition, the five projects were intentionally not too ambitious and considered as part of a piloting phase. By mid-March 2004, UNHCR had already signed seven sub-agreements and another 3 sub-agreement will have been signed by 15 April 2004. Most of the agreements concentrate on education, health and emergency assistance to groups or particularly vulnerable individuals. Terms of reference have expanded and financial envelopes have increased, reflecting not so much increased needs⁶ but increased awareness, trust and implementing capacity.
7. To deal with a large and rapidly increasing caseload, consisting of Indonesians from the province of Aceh and Rohingya who are given temporary protection letters, as well as individual asylum seekers, in a country that is not a party to the refugee instruments, the UNHCR Representation in Malaysia designed, in December 2003, a three pronged protection approach. Its implementation started on 1 March 2004, as far as existing resources permitted. Some aspects of the strategy will be implemented as of 1 January 2005, if indispensable but additional funds and human resources are made available:
 - (a) a proactive engagement strategy (with government officials, academics, civil society, media, NGOs and refugee organizations) to enhance awareness of the situation of asylum seekers/refugees, to alleviate their circumstances, provide protection within the community and create a situation that is conducive to the development of a proper protection framework in Malaysia;
 - (b) an amended Registration and RSD process both to meet new UNHCR standards and deal more effectively with genuine claimants;
 - (c) A strengthened protection outreach, border and detention monitoring service, including development of civil society networks, thus create more protection services throughout Malaysia.
8. Features of this three pronged approach include:

³ Compared to a processing capacity of 150 cases per month. This would mean that, all things remaining equal, it would take 3 years and 9 months to clear the backlog. Such a calculation would be based on the absurd assumption that not a single new application would be received in the meantime.

⁴ Strictly speaking, under the Immigration Act, it is illegal to provide assistance to illegal immigrants, including refugees and asylum seekers.

⁵ In the early 2000's, UNHCR had no implementing partner in Malaysia and assistance to refugees was directly implemented by the Representation in Malaysia.

⁶ It is sufficient to give two examples, falling squarely into UNHCR's mandate. There are about 2300 Rohingya children who are denied primary education. From May to December 2003, 54 incidents of SGBV were reported by women asylum seekers.

- Stronger linkages with government and quasi-government/statutory authorities, including SUHAKAM (the Human Rights Commission of Malaysia), the Bar Council and other institutions.
- Building on and expanding partnerships developed in 2003, to strengthen NGO capacity to deliver essential services to asylum seekers/refugees.
- Consolidation of the 5 national Community Services staff positions, with their withdrawal from registration screening allowing them to concentrate on outreach with individuals, refugee groups and NGOs. There will be a special focus on women-at-risk including survivors of SGBV and support to unaccompanied minors. Creation of an international Community Services officer post.
- Creation of a NOB Associate Liaison Officer post to facilitate linkages with government, media, civil society.
- A strengthened Reception and Registration Unit with seven additional staff, bringing the Unit into line with UNHCR standards and streaming all new applicants into one of three groups:
 - Manifestly founded and extremely vulnerable applicants, who would be registered, receive a UNHCR attestation letter and an appointment for RSD interview.
 - Applicants whose claims are not manifestly founded and/or who are not extremely vulnerable. These would be registered but would not receive an immediate RSD date or a UNHCR attestation letter.
 - Applicants clearly not claiming asylum. These would not be registered and would not receive an appointment date or a UNHCR attestation letter.
- A strengthened and re-structured RSD Unit with five additional eligibility counsellors and the division of the team into two sub-units able to cover first and second instance cases. With these additional resources, the strengthened RSD Unit will have a total maximum capacity of 270 cases per month, made up of 170 first instance cases and 100 cases at second instance. Special attention will be paid to streamline RSD/resettlement for those in detention.
- A strengthened Resettlement Unit, with the extension of the ICMC deployee and the recruitment of one national UNV to allow processing of up to 700 cases in 2004 and 800 cases in 2005 (compared to 500 in 2003).
- A strengthened detention monitoring system including installation of a hotline, with two additional staff to cover the increase in detention cases. The detention team will consist of both field and office based personnel, the latter to provide consistent reporting and follow-up.
- A strengthened protection monitoring network that will include border monitoring and community mapping. The expanded network that will include government officials, NGO's, academics and civil society will serve as UNHCR's "eyes and ears" outside Kuala Lumpur.
- To support these initiatives, an expanded Programme/Administration Unit will be required with 3 additional national staff (EDP, Human Resources and Programme). 3 new vehicles will be purchased to replace current fleet, which is 13 years old, and one additional driver will be recruited on FTA in 2004 and post creation will be sought in 2005. Office space will be expanded and the electrical system will be upgraded and rewired.

9. No major changes are expected in 2005. Asylum seekers will continue to register

with UNHCR in considerable numbers and the backlog will continue to grow, though, through its new strategy, the UNHCR Representation in Malaysia should be able to minimise its impact and eventually reduce it. The situation in both Myanmar and the Indonesian province of Aceh will most likely continue to remain volatile. UNHCR's realistic objective will be to contribute to an improvement of the protection climate and an expansion of the humanitarian space for persons of concern.

10. To be a reliable and credible partner, UNHCR needs to have adequate resources, to process cases fairly and rapidly and to address, through a well-balanced assistance and community services programme, the most basic needs of persons of concern.
 11. Based on 957 new asylum seekers, the initial ABOD for 2002 was US\$153,153; the obligated amount under the Care and Maintenance project was US\$212,500 (entirely implemented by UNHCR) and the staffing table included 7 posts (3 internationals, including 1 JPO, and 4 GL staff)⁷. Based on the figures for 2002 and the first months of 2003 (it is to be noted that the surge in asylum claims was mainly registered after the 2004 COP was submitted⁸), the approved ABOD for 2004 was US\$320,800; the allocation under the Care and Maintenance project was US\$475,000 and the staffing table for 2004 included 23 posts (7 internationals, including 2 JPO, 2 National Officers and 14 GL staff). The financial envelope requested for 2005, combining the ABOD and the project will be roughly the double of what was initially approved for 2004 (based on a caseload which was between 4 and 6 times lower, not a single implementing partner and a very limited UNHCR protection intervention capacity). In addition, the Representation in Malaysia will request the creation of 13 new posts (1 International, 1 National Officer and 11 GL staff), bringing the total of posts to 37, compared to a total of 67 persons who will be working in the office as of 1 January 2005. The request for post creations abide by the following logic:
 - (a) Building local capacity (only one international post, the Community Services Officer, who will be the main interlocutor and support of NGOs involved in health, education, support to victims of torture and SGBV, etc. Given the sensitivity for local NGOs to work with "illegals", the support of an international staff is essential).
 - (b) Restricting post creation to core protection functions (eligibility, registration and detention), core support functions (programme, EDP and human resources) and the key post of liaison (NOB) with the authorities and civil society. Given the backlog, the nature of the work and the predictable trends, all these posts should remain for a minimum of 5 years.
 - (c) Retaining flexibility in recruitment (30 positions under UNV contracts or other arrangements) to respond to a "crisis"-type situation, with the hope that the situation will normalise in the medium term.
- (b) **Selected Programme Goals And Objectives**

Name of Beneficiary population:

URBAN Refugees (excluding Indonesians from the province of Aceh and Rohingya from Myanmar)

Main Goal(s): UNHCR protection, assistance and community services activities will directly contribute to the expansion of the humanitarian space for refugees and asylum seekers in Malaysia. Asylum seekers will have access to fair and efficient asylum procedures and over time

⁷ In addition there were 4 "project" staff.

⁸ 1708 new asylum seekers from 1 January to 31 April 2003 as compared to 13,039 between 1 May and 31 December 2003.

durable solutions will be available for all refugees.

Principal Objectives	Related Outputs
<ul style="list-style-type: none"> • To have a reliable referral system in place by which particularly vulnerable (from both a protection and community services viewpoint) persons of concern are identified at an earlier stage. • To increase our RSD capacity both qualitatively and quantitatively. • To identify resettlement countries for recognised refugees, in particular for those in detention. • To respond through appropriate and timely protection interventions to incidents affecting persons of concern, in particular harassment by the police, arrest, detention and deportation. • To obtain a better respect by law enforcement agencies of UNHCR documentation. • To implement the relevant guidelines especially as related to the protection of refugee women and children, and prevention and response to sexual and gender-based violence. 	<ul style="list-style-type: none"> • UNHCR RSD and registration standards will be fully implemented. • The number of arrests, detentions and deportations will be reduced. • All detention cases, emergency cases and long staying refugee cases will have timely access to resettlement. • A modus operandi, based on mutual trust, will be established between UNHCR and the Malaysian authorities. Given the prevailing climate, the modus operandi will be an upgrading of the current ad hoc arrangements. • A new RSD registration database system will be fully operational to support UNHCR's protection activities.

Name of Beneficiary population: Rohingya from Myanmar

Main Goal(s): UNHCR will take concrete protection and assistance steps towards local settlement for the Rohingya community in Malaysia.

Principal Objectives	Related Outputs
<ul style="list-style-type: none"> • UNHCR "Rohingya Letters" will be better respected by law enforcement agencies and will provide better access to health, education, work and registration at birth. • A Rohingya-support network, involving UNHCR, government agencies, NGO's and respected Malaysian community leaders will be established. • Special attention will be given to the needs of Rohingya women, traditionally victims of various forms of discrimination and abuse and to Rohingya children who are excluded from developmental opportunities. 	<ul style="list-style-type: none"> • The number of arrests, detentions and deportations will be reduced. • The number of birth certificates issued to Rohingya born in Malaysia will be increased. • The number of school going children among the population will increase. • The number of Rohingya having access to health and social services will increase. • An open forum, where the status of Rohingya in Malaysia can be discussed, will be formed. • An increased number of Rohingya women will be offered training opportunities. • A mechanism will be in place to address abuses against Rohingya women. • Number of self-supporting activities among adult male Rohingya will increase.

Name of Beneficiary population: Indonesians from the province of Nangroe Aceh Darussalam

Main Goal(s): UNHCR activities will contribute to the granting of effective temporary protection and access to basic services in Malaysia to the Indonesians from the province of Aceh.

Principal Objectives	Related Outputs
<ul style="list-style-type: none"> • UNHCR temporary letters will be better respected by law enforcement agencies and will provide better access to health, education and work. • The Malaysian authorities will acknowledge that the granting of temporary protection to the Indonesians from the province of Aceh is a purely peaceful and humanitarian act and as such cannot be regarded as unfriendly by any other State. 	<ul style="list-style-type: none"> • The number of arrests, detention and deportation will decrease. • The number of children going to school will increase. • Access to health and social services will improve.

Name of Theme: Public Information, Awareness and Promotion of a Refugee-Protection framework

Main Goal(s): To ensure the authorities, influential actors, the civil society and NGO's better understand that refugees and asylum seekers have legitimate protection needs and should be treated with respect and dignity within a legal framework.

Principal Objectives	Related Outputs
<ul style="list-style-type: none"> • Refugees and asylum seekers will no longer be perceived as illegal immigrants, • Malaysian society, in general, will be more sympathetic to the plight of refugees and asylum seekers in Malaysia. • The Malaysian authorities will understand that UNHCR makes a substantial contribution towards finding durable solutions for persons in need of international protection and is not an obstacle in the immigration process. • The contribution of national NGO's who provide support to refugees and asylum seekers will be recognised by the Malaysian authorities as part of the legitimate role of NGO's. 	<ul style="list-style-type: none"> • National standing and influence of UNHCR will grow. • Malaysian civil society will increase its support to UNHCR. • There will be more positive press coverage as regards asylum. • Academic institutions will take an interest in refugee research and international refugee law. • An increased number of NGO's will be genuinely interested to work with UNHCR as implementing partners or to use their own resources for the benefit of persons of concern. • More Malaysian lawyers will be representing refugees and asylum seekers in courts. • Tangible understanding and respect of UNHCR roles amongst law enforcement agencies.