



UNHCR

United Nations High Commissioner for Refugees

Haut Commissariat des Nations Unies pour les réfugiés

Country Operations Plan 2007

MALAYSIA

Country Operations Plan for 2007 covering Malaysia

Part I: OVERVIEW

(1) Protection and socio-economic operational environment

At the end of 2005, UNHCR in Malaysia had registered 44,531 persons of concern (as compared to 35,152 in 2004 and 16,629 persons in 2003). Among them are 19,523 Indonesians from the Province of Aceh, 11,277 Rohingya Muslim refugees from Northern Rakhine State of Myanmar, 11,198 persons of concern from Myanmar, and 2,533 persons from other countries. 24% out of the total population of concern are women and 16% children. Among the 7,146 children, 4,726 are from Myanmar (of which 3,096 are Rohingya Muslim children), 2,066 are from the Indonesian Province of Aceh and 353 are from other countries.¹ In addition, there is an old caseload of some 61,314 Filipino Muslims in Sabah.² By the end of 2007, with estimated 11,000 additional asylum-seekers, the total population of concern to UNHCR will likely amount to some 111,000 people (including the 61,314 Filipino Muslims in Sabah). During 2005, the Office also recorded 277 SGBV cases (compared to 198 in 2004). In addition, not least because of the dire situation in Myanmar, there is a small but increasing proportion of refugees living with HIV/AIDS (35 during 2005). UNHCR is also aware of thousands of individuals, primarily from Myanmar, who claim to be in need of international protection and who wish to register with the Office but who have so far been unable to do so because of resource constraints. In addition, further inflows of people from within the region who may be in need of international protection will remain an important component of the overall migratory context.

Malaysia continues to face a shortage of human resources, and labour migrants (1.5 million, including an estimated half a million irregular migrants) have therefore become a significant constituent of its demographic and economic make-up. Given its relatively advantageous socio-economic position, the country will remain a pole of attraction for migrant workers from countries in the region, as well as for refugees seeking a safe haven and means of survival. Malaysia is, however, not a signatory to the 1951 Convention/1967 Protocol relating to the Status of Refugees and has no legislative provisions in place that deal with international refugee protection. Under the Immigration Act 1959/63 (Act 155), any person who enters or remains in Malaysia illegally is liable to prosecution which may result in indefinite detention without judicial scrutiny, corporal punishment in the form of whipping, fine and deportation. The vast majority of persons of concern to UNHCR fall into the category of “illegal immigrants” under Malaysian law, which provides no legal method to differentiate those in need of international protection from other migrants. Furthermore, their “illegal status” denies them access to legal employment and education. At this stage, the Malaysian Government takes no part in the reception, registration, documentation and status determination of asylum-seekers and refugees. UNHCR therefore remains the main actor of protection and assistance for refugees and asylum-seekers in Malaysia. Determination of eligibility for international protection is carried out entirely by UNHCR under its mandate. In 2005 UNHCR received a total of 15,166 new international protection applications in Malaysia. On the basis of a simplified registration and eligibility system, the Office managed to take 14,650 refugee status

¹ Figures are based on the Annual Statistical Report 2005 for UNHCR Malaysia.

² UNHCR bases this figure on the number of IMM13 issued by the Government to this population.

determination (RSD) decisions during 2005, either through the individualized refugee status determination process or group-based temporary protection approaches. While 77% of the total registered population received an RSD decision, the remaining 23% (8,692 cases) are yet to be determined. The high volume of applications to be processed makes the UNHCR operation in Malaysia one of the biggest RSD operations worldwide.

In response to this complex situation, in 2004, the Office embarked on a new overall strategy which in essence promoted group-based, temporary local solutions in respect of the Rohingya Muslim population from Myanmar and the Indonesians from the Province of Nanggroe Aceh Darussalam while using resettlement strategically for the remaining refugees, who have no close links to Malaysia but are recognized under the individualized RSD procedure. Another important intervening factor is related to the changing circumstances in the Indonesian Province of Aceh itself following the agreement reached between the Indonesian Government and the Free Aceh Movement (GAM), which could potentially pave the way for the voluntary return of this group. As a result, the Office's strategy is re-orientating towards durable solutions for these two major groups of concern, with a view to a possible exit strategy regarding both groups at the end of 2008, providing of course that the achievements of 2006 can be consolidated.

In the case of the Indonesians from Aceh, the emphasis will be on ensuring their full self-reliance whilst in Malaysia and on paving the way for their voluntary repatriation. As for the Rohingya Muslims from Myanmar, the Office will focus on achieving their full self-reliance and an eventual local solution. The Office will need to implement a programme that advances the self-reliance potential of both groups, notably in the employment and education sectors and that addresses effectively a number of issues, such as domestic violence, SGBV, reproductive health, early marriage and more generally the empowerment of women. UNHCR will therefore work closely with a variety of non-governmental partners, the employers, the trade union, UNICEF, UNFPA and the refugee communities themselves on vocational and skills training initiatives; income-generating activities; monitoring and improvement of labour standards; the gradual integration of refugee children into public schooling; literacy classes; as well as community development programmes to increase the participation of women and children in empowerment and self-reliance activities. As regards the situation of over 60,000 Filipino refugees in Sabah, the strategy is that by 2008 this group would no longer be listed as a group of concern in UNHCR's statistics since it is hoped that, as a result of UNHCR's continued advocacy efforts, they will have either been granted residence or citizenship. In 2007 and 2008 efforts will, however, need to be made in cooperation with UNICEF and SUHAKAM to identify and address potential problems of statelessness among this population, particularly in relation to women and children.

As for other refugee groups, it is possible to discern an emerging administrative protection framework, based so far on four decrees issued by different authorities that in effect exempts refugees documented as such by UNHCR from arrest and prosecution under the Immigration Act and grants them access to health care at reduced rates. This led to a considerable reduction in detention and prosecution of those already in possession of UNHCR documentation at the time of arrest. As a result of the aforementioned instructions, UNHCR managed, in 2005, to obtain the release of 1,734 asylum-seekers and refugees from detention in police lock-ups, prisons and immigration detention centres throughout the country. Documented refugees are *de facto* tolerated, and are (often) able to find work, in the informal labour market. The prospect for a local solution in Malaysia is, however, potentially limited only to those with close links to the country. If refugees have no close links with Malaysia, resettlement will be the only viable durable solution. Resettlement is also being used strategically to ensure the realization of temporary local solutions.

UNHCR will therefore continue to undertake its core protection, assistance and community services activities, including in particular registration, refugee status determination and documentation of asylum-seekers and refugees, as well as strategies to address SGBV and HIV/AIDS.

Communication with persons of concern and identification of vulnerable individuals will be carried out with a strong AGDM perspective in mind. To access the most vulnerable, UNHCR's multi-functional teams will make almost daily outreach visits to the various refugee communities and conduct, where necessary, mobile registration exercises, be it at detention facilities or at remote locations. The gradual implementation of expedited RSD processes shortened the waiting period to 8 months in 2005 (as compared to 18 months at the beginning of 2004). A slowing down of registration and a concentration of efforts on tackling the still existing backlog of some 8,000 cases should lead, in 2007, to a significant reduction in the RSD backlog and a reduction of the waiting period for RSD interview.

A limited number of extremely vulnerable refugees, in particular those unable to work or unable to pay the administrative fees for the issuance of temporary stay permits by the authorities, will continue to rely on UNHCR and its partners to provide basic necessities, such as financial assistance for shelter, issuance of stay and work permits by the Government, food, transport, basic health care, education/training for children, psychosocial/ counseling services, in particular for the survivors of SGBV/torture as well as unaccompanied minors, assistance for critical medical treatment, both short-term and possibly perpetual care, such as antiretroviral therapy. The Office will strive to identify and train additional non-governmental partners which will, hopefully, be able to take over some of these activities from the Office in 2007.

Since there are large numbers of people potentially of concern who have not yet been able to register with UNHCR and since the existing regulations do not differentiate between irregular migrants and people in need of international protection, outreach activities, as well as regular detention and court monitoring by UNHCR will be necessary to ensure that refugees are not penalized or returned forcibly. In 2007, it is expected that 2,500 refugees will be submitted for resettlement. This quota could be increased to 3,000 in 2008, and potentially even more.

Visibility in the local media, public awareness campaigns and events, as well as training and other promotional activities, (not least with a view to increasing our fundraising capabilities) will continue to form part of the Office's strategy in 2007. Working in cooperation with the UN country team, the Office will focus on topics such as birth registration, migration/asylum nexus issues and the broader UN human rights agenda.

By way of background as regards the regional dimension of the UNHCR Kuala Lumpur Office in the protection area, as set out in detail in the Regional Strategy of the Bureau for Asia and the Pacific, some 1.6 million people are currently forcibly displaced and/or in need of solutions in the Asia-Pacific region. These include 857,000 asylum-seekers and refugees, as well as 352,374 internally displaced persons (IDP). The overall figure also refers to some 44,000 refugees and IDP returnees, as well as 341,414 stateless and other people of concern to UNHCR. Only thirteen countries in the region have acceded to the international refugee instruments. Some countries are not even party to the main international human rights instruments. That being said, there is a tradition of hosting refugees informally in most countries. However, refugees and asylum-seekers often tend to be seen as "illegal migrants". Many countries do not have the necessary resources to build up refugee status determination processes and institutions on their own. With the exception of a few, most countries rely primarily on UNHCR to determine refugee status, assist refugees and

identify durable solutions for them. National institutions dealing specifically with refugees do not exist in the majority of situations and regional organizations, in most cases, have to date not included forced displacement or even broader migration questions in their respective agendas, partly because of the politically sensitive nature of these issues and partly because of the countries' preference to deal with refugee and migration issues on a bilateral basis.

The Bureau for Asia and the Pacific has crafted the Regional Strategy which forms the regional blueprint for UNHCR action both at the national and the regional level in line with the Global Strategic Objectives. To support the implementation of this Strategy, a number of actions are also required at the regional level, such as strengthening partnerships with other agencies and institutions, as well as bringing support for the delivery of protection closer to the field. As a result, the Bureau decided to create a Regional Protection Hub in Kuala Lumpur, very much in line with the HC's vision to strengthen protection delivery in the field. The rationale behind devolving some of the central protection support functions to the region is to be as close as possible to operations and to people in need of international protection. In close cooperation with the Regional Bureau and the Division of International Protection, the Hub's activities will contribute to the implementation and harmonization of protection standards, policies and procedures and the development and implementation of regional and sub-regional protection strategies and approaches. The activities of the Hub will be supported by a regional protection project which would include primarily staffing costs, regional training, capacity-building and promotional activities, in particular for Governments and NGOs, funds for research and the commissioning of studies. The ultimate beneficiaries are the refugees and others of concern to UNHCR in the region. The Hub will also establish contacts with other UN agencies, such as UNICEF, OHCHR, ILO as well as external interlocutors who could potentially be of benefit to the region as a whole, for instance, in the area of research, notably on asylum/migration nexus issues, legal and academic institutions and joint initiatives.

(2) Operational goals and potential for durable solutions

In line with UNHCR's Global Strategic Objectives for 2007 - 2009, the following are the overall strategic goals of the 2007 Malaysia country programme; including its new regional support functions in the protection areas:

- With a possible exit strategy in mind, ensure through Government and NGO engagement, self-reliance of the Acehnese and Rohingya populations of concern, and in the case of the Acehnese work towards possible voluntary repatriation of those who wish to return once the situation in the Indonesian Province of Aceh fully stabilizes; and in the case of the Rohingya pave the way for local integration through a significant improvement of their living conditions, notably in the health, education and employment areas; as well as in the case of the Filipino refugees in Sabah, ensure their continued stay and explore permanent residence possibilities for them. (**Global Strategic Objectives 3; Bureau Strategic Objective: Pillar 2**)
- For refugee groups without links to Malaysia, identify and work towards realizing appropriate durable solutions, primarily but not exclusively through resettlement, of at least 2,000 persons in 2006; 2,500 persons in 2007; and 3,000 persons in 2008. (**Global Strategic Objective 3; Bureau Strategic Objective: Pillar 2**)
- Address, in close cooperation with the Malaysian authorities, non-governmental partners, SUHAKAM, the trade union, the employers and other stakeholders, as well as the refugee

communities themselves the manifold protection problems persons of concern are confronted with in Malaysia, particularly detention/deportation; prosecution; harassment; violence against women; response to and prevention of SGBV; access to education, employment and health care, including reproductive health; exploitation at the workplace; registration and documentation, as well as potential statelessness, adopting an overall gender and age mainstreaming approach. **(Global Strategic Objectives 1, 2; Bureau Strategic Objective: Pillars 1, 2)**

- Tackle the asylum/migration nexus by determining and documenting refugee status under UNHCR's mandate in sound, efficient and streamlined RSD procedures, taking into account a gender and age mainstreaming perspective, and, at the policy level, by promoting responsible migration management of benefit to refugee populations and stateless persons through roundtables, studies, engagement with the academic/research community, as well as in the long-term by acting as catalyst for civil society to embark on migration policy and human rights reform, *inter alia*, for the purpose of reflecting favourably in domestic law the special situation of refugees and asylum-seekers. **(Global Strategic Objectives 2, 4; Bureau Strategic Objective: Pillar 1)**
- Provide, through close and coordinated partnership arrangements with local NGOs, the legal community, employers, the trade union and the civil society at large, as well as with UN sister agencies, assistance services for vulnerable persons of concern to UNHCR in the areas of legal intervention, shelter, health care, education, employment, vocational training and community services, focusing particularly on the policy priorities relating to women, children, unaccompanied minors, refugees with special needs, refugees living with HIV/AIDS, survivors of SGBV/torture, as well as empower further the refugee communities themselves in these areas, adopting a gender and age mainstreaming approach. **(Global Strategic Objectives 1 and 6; Bureau Strategic Objective: Pillar 1)**
- Create a positive understanding for refugees and UNHCR activities both worldwide and in Malaysia through high visibility in the media, public awareness campaigns, promotional and training activities, including with a view to increasing the level and diversity of funding, especially from the private sector. **(Global Strategic Objective 5; Bureau Strategic Objective: Pillar 4)**
- As regards regional protection activities, in close cooperation with the Bureau for Asia and the Pacific and the Division of International Protection, through the Regional Protection Hub, based in Kuala Lumpur, provide protection support to the offices in the region, particularly in the areas of RSD, legal advice, development of coherent protection strategies, operational protection guidance and training, thus contributing to the implementation and harmonization of protection standards, policies and procedures and the development and implementation of regional and sub-regional protection strategies and approaches while adopting a gender and age mainstreaming approach; and, at the request of the Bureau, support and collaborate with UNHCR initiatives and regional processes, such as the Bali, APC and other regional institutions, notably in the asylum/migration nexus and broader human rights area. **(Global Strategic Objectives 1, 2; Bureau Strategic Objective: Pillars 1, 3)**

Part II: COMPREHENSIVE NEEDS AND PARTNERSHIP

(1) Outcomes of joint planning and management of identified gaps

In preparing the COP, the Office held several planning meetings with partners, in particular implementing and operational partners, the UN country team, as well as the donor community in the first three months of 2006. It culminated in a Joint Strategic Planning Workshop for the 2007 refugee programme which took place in Kuala Lumpur on 26 January 2006 and brought together over 50 participants from implementing and operational partners, SUHAKAM, the Bar Council, UN agencies, civil society, academia and human rights groups. The Office also engaged the refugee communities on the basis of needs assessments involving refugee women, men, girls and boys by conducting surveys, outreach visits and participatory assessments, as well as by adopting the AGDM methodology through multi-functional teams in November 2005.

The planning process has been geared towards responding to the Organization's mandated responsibilities and organizational priorities, as set out in the Global Strategic Objectives and the Bureau's Regional Strategy. It has helped refine the strategic directions for this operation and identify gaps in the delivery of protection and assistance.

As regards the gaps analysis and action agreed with partners to address them, it was clear that the most important gaps are access to education, legal employment, full official recognition of refugee status, as well as response to SGBV and health care, particularly in detention centres. As a result of the gaps analysis, a UNHCR-led working group (consisting of representatives of human rights NGOs, SUHAKAM, the Bar Council, the trade union, the employers and academia) was founded for the purpose of analyzing the various issues of the Immigration Act in need of reform, that is, the treatment of refugees and asylum-seekers, trafficking, violence against women and overstaying migrants. It should lead to a set of recommendations to be submitted to the Government in 2007. Similar UNHCR-led theme groups have been established in relation to education and health for the purpose of coordinating projects in these areas in 2006 and planning in detail for the country operation in 2007. UNICEF and SUHAKAM will contribute to campaigning for access of refugee children to education. Two NGOs (Malaysian Care and Harvest Centre Berhad) will continue providing education to refugee children and develop a programme for a broader range of NGOs to assist in the transition process and prepare refugee children for access to public schools when granted. While continuing their regular activities in detention centres and through mobile clinics in jungle settlements, health NGOs will also extend their HIV/AIDS programme to detainees. The influential national women's group of NGOs will actively seek to involve the Ministry of Women, Family and Community Development in issues relating to effective prevention and response to SGBV whilst working on training programmes for the refugee communities in collaboration with UNHCR. UNHCR will therefore continue to depend heavily on current and future implementing and operational NGO partners to better meet the needs of people of concern.

UNHCR began working with NGOs as implementing or operational partners in 2004. The Office hopes to significantly increase their numbers in 2007 and 2008, primarily to work towards realizing durable solutions for the Indonesians from Aceh and the Rohingya Muslim population from Myanmar, as well as to provide basic services to vulnerable individuals among other refugee groups.

The COP has thus been finalized, taking into account the outcomes of the extensive planning process and the various constraints, which confirmed the proposed strategic thrust for the programme and the indicated priority objectives and activities as follows:

The following sectors have been identified as allowing UNHCR and its partners meet and sustain minimum standards of protection and assistance:

- Transport/Logistics
- Domestic Needs/Household Support
- Health/Nutrition (with an emphasis on HIV/AIDS)
- Education (pre-school, primary, secondary and vocational/skills training)
- Community Services (with an emphasis on SGBV)
- Legal Assistance/Protection (perhaps through the creation of a UNHCR-funded Legal Aid Clinic and Counseling Centre)
- Income-Generation (local integration with a phase out plan by 2008)
- Agency Operational Support (for registration, RSD, detention monitoring, education, health and community development)

Subject to funding, the following is a possible division of labour envisioned for the 2007 Malaysian operation:

UNHCR Malaysia will concentrate on protection and protection assistance for populations of concern in Malaysia, as well as resettlement for those in respect of whom a temporary local solution is not feasible (including those who are in detention). In terms of direct implementation, not least as required by the Government, the Office will need to undertake the following main activities in 2007, adopting a strong AGDM approach: registration; refugee status determination; documentation; detention and court work; community outreach, contacts and empowerment; resettlement; preparations for voluntary repatriation; programme coordination activities with partners in the areas of SGBV, including domestic violence, health, including reproductive health, and HIV/AIDS, education, vocational/skills training, employment, including income-generating activities, and shelter; external relations, including media work, promotional/PI activities, training and fund-raising.

In terms of the overall implementation strategy, UNHCR will need to maintain a process of interactive participation with the Malaysian Government, at different levels, as well as its implementing, operational and other partners in order to promote a shared vision in addressing the needs of, and durable solutions for, the various refugee and stateless groups in Malaysia. UNHCR will therefore continue its support for activities which promote cooperation, capacity-building and dialogue, including joint strategic workshops, training sessions, and planning exercises. In line with its policy of co-funding, UNHCR will encourage its partners to take over progressively and implement selected services for refugees within their own programmes. Similarly, UNHCR will continue to maintain an active, substantial dialogue with its Government counterparts in order to advance the protection of refugees in Malaysia and to ensure their full and unhindered access to employment, education and health care.

UNHCR will continue to engage the other UN agencies to benefit from their existing country programmes, especially UNICEF, UNFPA and WHO on issues relating to health, refugee children (including their birth registration and immunization), violence against women, SGBV and

HIV/AIDS. For 2006 and 2007 UNICEF has in principle agreed to collaborate closely with UNHCR in the aforementioned areas, provided the Government does indeed grant access for refugee children to education. Similarly, on violence against women and birth registration issues, UNFPA has indicated an interest in being involved. UNHCR will continue to be an active member of the HIV/AIDS theme group chaired by WHO. WHO is committed to providing support on specific health-related issues, such as contingency planning for groups of concern in the context of avian influenza, immunization of children and the health situation in prisons and detention centres.

(2) Contributions by partners

(a) Contributions by the host Government, refugee and/or local communities

The Malaysian Government traditionally contributed land and natural resources to the refugee population, including the use of sites, water, other natural resources, and the provision of security and management. This has in particular been the case for the Filipino refugees in Sabah. Providing these services to the refugee population in 2007 is estimated to amount to some 1,906,361USD. On the assumption that the Government will continue to provide these services, UNHCR assistance activities will focus on the identified needs of the most vulnerable and groups with special needs, as well as contributions in support of Government services for refugees in the health, employment and education sectors.

The different refugee populations have set up their own community support groups, providing, *inter alia*, temporary shelter, food and even psycho-social support to the most vulnerable among them, including the physically challenged, survivors of SGBV, the elderly, unaccompanied minors or women and children with special needs, as well as those who have just arrived or are ill. The refugee communities will also continue to manage centres for community activities which include informal education and employment opportunities. These various community support activities are self-funded by the refugees themselves through monthly contributions from those who are gainfully employed. As for needs which the communities are not able to meet, community leaders usually refer them to UNHCR.

Finally, informal contributions from the legal community in Malaysia should also be acknowledged and will continue to be necessary in 2007 since UNHCR will continue to work with local lawyers on cases requiring legal representation in court. Some lawyers work for refugees *pro bono* or charging at heavily discounted fees to UNHCR.