



Roundtable on Alternatives to Immigration Detention

Held on 12th November 2013 at the Human Rights Commission of Malaysia,
Integrity Room, 13th Floor, Menara TH Perdana,
Jalan Sultan Ismail, 50250 Kuala Lumpur

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1. Purpose of the Consultations

The presence of refugees, asylum seekers and irregular migrants in Malaysia poses a wide range of complex legal, humanitarian and operational challenges for the government. At the heart of these challenges lies the need to reconcile (or accommodate) what can often be competing priorities: on the one hand, to safeguard the State's legitimate sovereign interests and the rights of Malaysian citizens while on the other, ensuring refugees, asylum-seekers and irregular migrants are treated in a humane and compassionate way that fully respects principles of international law. This includes international conventions to which Malaysia is party, including the Convention on the Rights of the Child (CRC).

Against this backdrop, SUHAKAM organized a roundtable to discuss the use of immigration detention in Malaysia and the possible alternatives to detention (ATDs) that can be implemented to prevent and end unnecessary detention. A key focus of the roundtable was on the situation of children in immigration detention, whether accompanied, unaccompanied or separated, and whether refugees, asylum seekers or otherwise undocumented.

The key objectives of the roundtable wereto:

- Bring together experts from the Asia-Pacific region to discuss ATDs that have been employed positively in other 'similarly-situated' countries and which could be adapted to the situation in Malaysia, particularly for children.
- Enable the Malaysian government to share some of its good practices in relation to immigration detention.
- Allow experts from Malaysian government ministries, civil society and UN agencies to discuss opportunities for collaboration to achieve ATDs in Malaysia, with a specific focus on children
- To build on the positive progress already made by the Malaysian government, SUHAKAM and NGOs in 2011 and 2012 to discuss the situation of children in immigration detention.

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The Consultations were attended by 21 participants from the following government ministries: the Ministry of Home Affairs (KDN), including the Immigration Department; the Ministry of Women, Family and Community Development (MWFCD); and the Department of Social Welfare (JKM). Participants also included representatives from child rights NGOs, namely SUKA Society, Voice of the Children and Yayasan Chow Kit; the United Nations High Commissioner for Refugees (UNHCR); and the International Committee of the Red Cross. Dato' Yasmeen Shariff, member of the UN Committee on the Rights of the Child was also in attendance.

2. Key Outcomes and Recommendations

The following key points were raised and recommendations agreed by the participants:

- There was a general consensus that **children, particularly unaccompanied and separated children, should not be detained in immigration depots** as this was detrimental to their physical and psychological well-being, and not in line with Malaysia's obligations under the CRC.
- There was also general consensus that it would be beneficial for Malaysia to explore the adoption and implementation of ATDs, with a **specific focus on children as a priority vulnerable group** for the above reasons. Further key justifications for this included:
 - A policy of detention as the first resort has resulted in overcrowding in the detention depots and difficulty in managing detainees, in turn resulting in excessive strain on officers in the Immigration Department, especially those working in depots. The cost of running depots is also high whereas ATDs are generally significantly cheaper than running detention centres (this was supported by data from Adrielle Panares, the speaker from International Social Service Hong Kong).
 - The effectiveness of detention as a means of deterring irregular migrants, refugees and asylum seekers from coming to Malaysia or in maintaining security or preventing social ills is questionable. On the other hand, examples from other countries shows that ATDs can be a more effective and humane way of managing refugees, asylum seekers and irregular migrants in the community setting while helping governments achieve their migration management objectives.
 - Implementation of ATDs for children would help ensure that the challenges of managing refugee, asylum seeking and irregular migrant children is shared more equally among different government ministries working in partnership with NGOs.
- A tangible goal would be exploring a **pilot ATD program for children**, preferably unaccompanied minors.
- As a necessary first step towards achieving this goal, a **working group** should be established as soon as possible comprising of government ministries (notably KDN, the Immigration Department, MWFCD, JKM and other relevant government agencies), SUHAKAM and NGOs. Members of the working group would then collaborate towards formulating an appropriate ATD model that could be piloted for a small group of children.
- There was a recognition that any ATD programs or policies had to be suitable for the local context, having regard in particular to the large numbers of irregular migrants in Malaysia, and to also address the government's security, social and political concerns. The working group would therefore have to collaboratively develop an ATD model that would be suitable for Malaysia's legal, policy and operational framework.

3. Overview of the Consultations

a. Opening Address

Mr James Nayagam, SUHAKAM Commissioner, provided the opening address and reiterated the objectives of the roundtable. He referenced the growing momentum at the international level to end the immigration detention of children and reminded the participants of Malaysia's accession to the CRC.

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Malaysia has expressed reservations to Articles 2, 7, 14, 28 paragraph 1 (a) and 37 of the CRC, declaring that such provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the country. However, Mr Nayagam noted that no reservations have been made to Article 22 of the CRC, which provides for the rights of refugee and asylum seeking children to protection and humanitarian assistance, nor Article 3 which requires that the best interests of the child be a primary consideration in all actions concerning them.

Mr Nayagam noted the efforts the Malaysia government has made to improve conditions in the immigration depots; however he also pointed to some of the challenges faced by detained children, including those who were unaccompanied or separated, as observed by SUHAKAM during their periodic visits to immigration detention facilities. SUHAKAM has noted that there are no specific activities or facilities at detention depots to cater for the rights and needs of child detainees, including access to education.

In recognition of this and the government's continued interest in exploring alternatives to immigration detention for children, SUHAKAM organized this roundtable with a specific focus on developing concrete recommendations and strategies to implement ATDs for children. Mr Nayagam stated that from the outset, SUHAKAM's understanding is that immigration control is a fundamental concern of the Malaysian government and one that is both its sovereign right and duty. SUHAKAM and NGOs simply seek to help limit and end any detrimental effect of immigration policies and practices on children, as they are a particularly vulnerable group. To this effect, SUHAKAM and NGOs are committed to work in partnership with the government to help it achieve these goals and to uphold its international legal obligations and reputation.

b. Session 1- Current Situation in Immigration Depots

Encik Mohd Sabri, Commandant of Juru depot presented on the current situation in the immigration depots in Malaysia, with a particular focus on children. He began by clarifying that as of 4th October 2010, the immigration depots are managed by the Immigration Department, with collaboration from the prisons department, police, RELA and the civil defence force (JPAM). There are currently 14 immigration detention depots in Malaysia, in Ajil, Belantek (currently closed as it is under renovation), Juru, Kemayan, KLIA, Langkap, Lenggeng, Machap Umbo, Pekan Nenas, Semenyih, Tanah Merah, Bekenu, Semuja, and Bukit Jalil. He noted that there are detention depots in all states except Perlis.

Encik Sabri explained that the Immigration Department is concerned about detainees in immigration depots and cooperates with NGOs, ICRC, UNHCR as well as other government ministries including the Ministry of Health (MOH) to seek compliance with international standards and to maintain and control detainees so that they feel safe in the depots. For example, medical officers from the MOH will visit Juru once a month to provide health services; they will take blood samples to see if detainees have any diseases and conduct routine check-ups for pregnant women.

Encik Sabri also shared statistics with the participants, noting that as of 8 November 2013, there were 8,857 persons in detention throughout the country, with the majority being of Burmese, Indonesian and Bangladeshi nationality. Of these 8,857 persons, 782 were children. Encik Sabri also shared statistics that showed that from January to October 2013, there have been 1,406 children detained in depots throughout the country.

Issues that the immigration department face in running the immigration depots include:

- The capacity of the immigration depots limited and many are overcrowded
- The detention officers have difficulty in meeting the needs of children. There is no special depot to cater for child detainees and this is a serious setback.
- There is a lack of expertise on how to conduct age determination processes – depot officers find it difficult to ascertain if someone is a child or adult. Sometimes if someone claims to be a child but his/her physical build suggests they are an adult, the officers have no choice but to place them with the adults
- There is insufficient space or opportunity for detainees to exercise and for children to play
- Mental and physical health needs can be hard to meet - some detainees are physically and mentally unfit because they are kept in cramped conditions and diseases can spread easily. Although

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detainees who are really sick will be sent to hospital for treatment, officers have no special expertise to make this determination as to whether hospital treatment is really necessary. There is therefore a need for medical officers to be stationed in the depots permanently. Detainees who are mentally unwell are also difficult to manage; they may injure themselves or hurt other detainees and depot officers.

- The release of refugees and asylum seekers to UNHCR can sometimes result in families being separated. For example, a husband and wife were detained in Juru. UNHCR interviewed the wife and she was released, however the husband continued to be detained. This caused problems for the Juru detention officers as the husband was very upset. Similarly, sometimes families are separated and detained in different depots which can also cause problems in managing the detainees
- Availability and quality of food – the depots already supply better quality food for pregnant mothers and new mothers, however funding is limited to cater for the needs of all detainees
- Some depots are quite old and in some cases the buildings may not be safe for detainees

From the perspective of the Immigration Department, 3 months is too long for someone to be detained in a depot. Deportation of irregular migrants is the best way to reduce overcrowding, however in the case of nationals from Myanmar especially, deportation is not possible. If a person is detained for more than 6 months, the depot commandant will have to account to Putrajaya for why prolonged detention is necessary.

c. **Session 2- Introduction to Alternatives to Detention and International Standards**

Mr Grant Mitchell, Director of the International Detention Coalition (IDC) began his session by noting the positive progress achieved since 2009 when he was last in Malaysia,

“Since 2008, there has been an increasing move by governments to use immigration detention as a last (rather than first) resort and in doing so, to adopt and implement ATDs”

presenting at a roundtable with the government on immigration detention. He noted for example, reports of improvements in water and sanitation at the detention depots; the introduction of policies to allow for the release and non-detention of UNHCR registered refugees and asylum seekers; and the continued dialogue between the government, SUHAKAM and NGOs on the situation of children in immigration detention.

Global Trends and Developments around ATDs

Mr Mitchell noted that since 2008, there has been an increasing move by governments to use immigration detention as a last (rather than first) resort, and in doing so, to adopt and implement ATDs.

The definition of an ATD is *“any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community*

with freedom of movement while their migration status is being resolved".¹

Mr Mitchell then highlighted some of the international developments around ATDs for children, noting in particular the statement by the UN Committee on the Rights of the Child in March 2013 that "*States should expeditiously and completely cease the detention of children and their parents on the basis of their immigration status . . . [and] adopt alternatives to detention*".²

He also highlighted the steps taken by different countries to end the immigration detention of children, including Mexico, Panama, and Belgium, where laws or policies either prohibit children from being detained, or allow for their provisional release into the community. In the Asia-Pacific region, Mr Mitchell highlighted that in 2010, the Japanese government released all children from immigration detention and no longer detains them. Similarly in 2011, Indonesia revised its immigration laws to allow for release of children from immigration detention. In China, new legislation specifically provides for the non-detention of refugee and asylum seeking persons, and exempts children below 16 from detention for investigate purposes.

Mr Mitchell then explained why more and more governments are using detention as a last resort and moving towards ATDs. This is because international research has shown that detention is expensive, does not deter, and damages the physical and psychological health of detainees. Although many governments use detention as a deterrence measure, international research – included that conducted by UNHCR- shows that this is not effective and does not reduce the numbers of irregular arrivals. This is because refugees and irregular migrants are either not aware of the detention policy or its impact, may see it as an inevitable part of the journey, and/or do not convey information about detention back to others in the country of origin.

Detention is also damaging; clinical research shows that children in detention may suffer damage to their psychological or physical health, may experience impairment of their cognitive development and may also be vulnerable to physical, emotional and sexual abuse in detention. Indeed, this was one factor that led to the release of children from immigration detention in Japan: after the numbers of child detainees doubled in 2010, the Japanese government found it increasingly difficult to cater for their mental health needs in detention. As a result, they were released to, and cared for in the community.

“States should expeditiously and completely cease the detention of children and their parents on the basis of their immigration status...”

¹Taken from R Sampson, G Mitchell, L Bowring (2011), *There are alternatives: a Handbook for Preventing Unnecessary Immigration Detention*, Melbourne, the International Detention Coalition, p. 2, available at <http://idcoalition.org/cap/handbook/>

² Committee on the Rights of the Child (2013), *Report of the 2012 Day of General Discussion: The Rights of all Children in the Context of International Migration*, available at <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>

Alternative to Detention Models

Mr Mitchell explained that from the IDC's analysis of international developments and trends, ATDs are seen to take two key forms: (a) mechanisms that prevent unnecessary immigration detention and (b) strategies for effective and humane case resolution in the community.

(a) *Mechanisms to Prevent Unnecessary Immigration Detention*

Screening and assessment of populations subject to or at risk of detention provides governments with the information required for making informed decisions about an individual; this includes the decision as to whether detention is actually necessary and whether conditions for release should be imposed while that individual's immigration status is being resolved. Screening and assessment is therefore one of the core mechanisms for preventing unnecessary, arbitrary or wrongful detention. It is also a means to identify and assess levels of risk and vulnerability. Conversely, without proper screening and assessment, governments run the risk of engaging in wrongful, unlawful, arbitrary and indefinite detention. Other risks include wrongful deportation and refolement; difficulties in resolving individual cases (due to lack of information about that particular individual's circumstances); harm to detainees; and costly litigation where detainees are able to bring claims against the government for wrongful or unlawful detention.

The IDC's research found that for effective outcomes, individual screening and risk assessment should focus on the following 4 components: (a) the legal obligations owed by the state to the individual; (b) vulnerabilities of the individual, whether innate or as a result of the surrounding environment; (c) identity, health and security checks; and (d) individual case factors (notably factors such as age, gender/diversity, health, and protection needs). An assessment of the likelihood of an individual absconding if placed in an ATD should include the following considerations: stage in the immigration process; intended final destination; ties to the community (e.g. ethnic community); faith or belief in a fair outcome in the immigration process; and character (e.g. whether there has been previous compliance with immigration processes, appointment dates, etc.). Screening tools are available to governments and NGOs seeking to do such assessments.

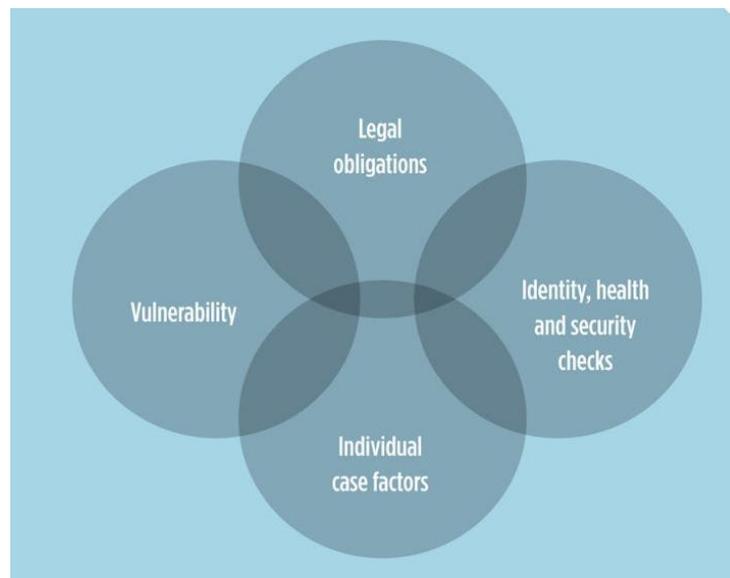


Figure 1: Screening & risk assessment components: www.idcoalition.org

The USA is a practical example of a government conducting screening and assessment of its irregular migrant population. The US government is the world's biggest detainer; in 2008, after several lawsuits were filed against the government for wrongful detention, the Obama administration decided to embark on a process of reforming the immigration detention system. This included the creation of a working group comprising the US Department of Homeland Security and NGOs which in 2011, developed a risk assessment tool that all immigration officers now utilize when screening an irregular migrant to determine if detention is necessary.

(b) *Strategies for Effective and Humane Case Resolution in the Community*

In terms of effective and humane case resolution in the community, these mechanisms can generally be categorized into (a) release provisions (b) community models (c) conditional release:

- **Release provisions** can take the form of procedural safeguards such as judicial review of detention; parole or time limits on the length of detention (e.g. Taiwan is currently revising its immigration laws so that the initial length of detention for investigative purposes will be reduced from 60 to 15 days, with a further 45 day extension possible only following judicial review); administrative and discretionary release provisions; registration and documentation (e.g. the release of UNHCR registered refugees in Malaysia); release or non-detention of vulnerable groups (e.g. in Indonesia and Hong Kong); own recognizance (e.g. in Hong Kong); the use of guarantors; regularization; and also ad hoc release.
- **Community models** can include open reception centres; ethnic communities; shelters; family/community group/faith-based organization/NGOs; and case management programs. Shelters tend to be one of the more "traditional" forms of community models; an example is shelters for unaccompanied refugee minors run by NGOs in Jakarta. Community models around the world are either provided by the government solely (e.g. in the Philippines, New Zealand, Belgium and Sweden); by civil society/NGOs solely (e.g. Thailand and Mexico); or through a government and civil society partnership (e.g. Hong Kong, US, Indonesia and Netherlands). From the IDC's observations, the models involving government and civil society partnerships have tended to be the most sustainable and efficient.
- **Conditional release** can take the form of individual undertakings (requirements placed on an individual to comply and cooperate with immigration/enforcement authorities); monitoring and supervision (including home visits, or a requirement that an individual report to the authorities on a regular basis or live at a nominated address); negative consequences for non-compliance (such as forfeit or enforcement of bail, bond and surety arrangements); and intensive case resolution (involving coordination, case management and return programs). Examples of condition release are the reporting requirements in Hong Kong (described by Ms Adrielle Panares in her session), as well as the use of bonds in Japan and Korea.

Lessons Learned from ATDs

(a) *How ATDs have been achieved globally*

Through its research on ATD models globally, the IDC has found that these have developed through one, or a combination of, the following: legislative reform; policy developments; research; the formation of working groups; and/or the use of pilot programs.

Pilot programs have been commonly used to test whether a particular ATD model can work in that country context. Such pilots have usually been implemented through a collaboration of government and community service providers who have jointly developed, implemented and monitored the ATD pilot program and ensured essential community support measures are provided such as case management, shelter, welfare and legal support.

In Japan for example, the release of children from immigration detention, the end of further child detention and a pilot program to effect the release of vulnerable persons from airport detention to a NGO-run shelter was achieved through policy change as well as the efforts of a NGO and government working group.

(b) *Benefits of ATD Models*

Research has shown that the use of ATD models is beneficial in several key ways, namely: (a) ATDs reduce the human cost of immigration detention (b) maximize management and case resolution in the community (c) are cheaper than detention (d) reduce overcrowding and long-term detention (e) reduce wrongful detention and litigation (f) improve health, well-being and protect and fulfill human rights and (g) Increase compliance with immigration requirements.

Mr. Mitchell re-iterated that through assessing the individual context, making referrals to community programs and applying conditions in the community if required, governments can make informed decisions on individual placement, management and support requirements. These mechanisms reduce the financial and human cost of immigration detention while meeting government and community expectations.

He concluded by emphasizing that policy makers understandably have a fear that if people are released from detention they will abscond/disappear. However, a well-planned and supported ATD program can significantly minimize the risk of this occurring. Good partnerships between NGOs and governments are essential in order for ATDs to work effectively and for complex cases to be addressed effectively.

“Research has shown that the use of ATD models are more humane, maximize case resolution, are cheaper than detention and increase compliance with immigration requirements...”

d. Session 3- Alternatives to Detention – the Hong Kong Model

Ms Adrielle Panares, Programme Director of the Asylum Seekers, Torture Claimants and Refugees (ASTC) Project at International Social Services Hong Kong (ISS-HK) began by explaining that ISS-HK is a NGO that has been operating in Hong Kong since 1958. The ISS-HK currently works in close partnership with the Hong Kong government to help assist and manage refugee, asylum seekers and torture claimants living in the community. The ASTC program is one of several areas in which ISS-HK works (others include foster care, adoptions, assistance to the elderly and support for migrants).

Ms Panares gave participants an overview of how Hong Kong transitioned from closed refugee camps during the Indo-Chinese refugee crisis to a general policy of non-detention of refugees, asylum seekers and torture claimants. It was also clarified at this stage that Hong Kong is *not* a signatory to the 1951 Convention on the Status of Refugees nor its 1967 Protocol, but has ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

During the Indo-Chinese refugee crisis, Ms Panares was responsible for overseeing the provision of services by ISS-HK to refugees within the refugee camps in Hong Kong. From her experience working in the closed detention camps (a form of detention as refugees had no ability to leave the camp), she made the following observations:

- The detention environment and institutionalization can highly damage the psychological health of individuals, especially those who are already traumatized. ISS-HK observed serious mental health issues, increased suicidal tendencies, depression, trauma and physical regression among detainees in the camps. When the last of the camps were closed and refugees released to live in the community, ISS-HK further found that many had been so damaged by detention that they could not make simple decisions for themselves nor understand how to live a normal life outside of.
- Many efforts were made to try to improve conditions in detention, including meeting basic needs in relation to food, clothing, shelter, education, recreation, physical and mental health services, work options within the detention camp, and allowing detainees to celebrate religious and cultural holidays. However these had limited effect because people were still detained and deprived of their ability to live a normal life. Ms Panares explained that even though a wide range of services were being provided by NGOs in the camps, attempted suicides, rapes, breakdown of the family structure and other problems were happening on a regular basis.

“The difficulties and financial costs involved in running detention centers meant that efforts could be far better utilized on ATDs with less strain for government, NGOs and migrants themselves...”

- Running closed detention centres is extremely expensive. Over 2 billion Hong Kong Dollars was spent on maintaining these refugee detention camps. **In contrast, it costs the Hong Kong government a total of HKD 118 (approx. 48 MYR) per person per day to fund the services provided by ISS-HK to refugees, asylum seekers and torture claimants living in the community** (see page 9 for further information on these services).

A key learning was therefore that the difficulties and financial costs involved in running detention centers meant that efforts could be far better utilized on ATDs with less strain for government, NGOs and migrants themselves. With this realization, in 1998, the last refugee detention camp was closed in Hong Kong. In 2008, the Hong Kong government revised its detention policy such that in making a decision to detain or release an irregular migrant, each individual case had to be screened and the merits of the case considered. Because of this, most refugees, asylum seekers and torture claimants are being released straight into the community and if they are held for identity verification purposes, this does not usually exceed 14 days (unless they have committed crimes). When released, they are required to sign a 'recognizance' document, renewable monthly; this certifies the holder has claims under process and has permission to stay in Hong Kong. The person is also required to report to the Hong Kong Immigration Department once a month, or as scheduled. They must also report to the Hong Kong Social Welfare Department who will then conduct an initial screening to determine if a person is able to live independent/without assistance in the community. Those who require assistance will be referred to ISS-HK pursuant to a MOU between two parties.

The services provided by ISS-HK to refugees, asylum seekers and torture claimants is funded by the Hong Kong Social Welfare Department (HKSWD), and not the Hong Kong Immigration Department or the Security Bureau. This is important as the involvement of the HKSWD has allowed for the use of a casework management approach and access to government services as needed. Ms Panares stressed that *assistance is in-kind* and that apart from transportation, *ISS-HK does not distribute cash* as this was something the Hong Kong government insisted on.

Services provided by ISS-HK are designed to ensure that refugees, asylum seekers and torture claimants do not live in destitution and their basic needs are met in relation to housing, food, clothing, toiletries, medical assistance and education for children. This includes:

- Counselling and psychosocial support both on an individual and group level
- Assistance with housing; the accommodation unit team also conducts home visits and helps negotiate with landlords
- Dedicated shelter for UAMs, both males and females. This includes 24 hour care with a professional staff on duty at all times. The maximum capacity of each shelter is 12 UAMs at any given time, and each UAM is assigned a social worker/counsellor. UAMs can also access local schools and have freedom of movement, though a curfew is imposed. At 18, an Independent Living Assessment is conducted to evaluate the readiness of the resident to live outside the shelter.
- Transition shelter for female minors who have turned 18 and who are determined as being not ready to live independently in the community. The women have freedom of movement and can access ISS-HK staff as and when needed. The transition shelter

can also be used as an emergency shelter to assist women and girls in cases of domestic violence or human trafficking.

- Specially designated shelter for female survivors of sex and gender based violence, domestic violence and women with children needing immediate and temporary accommodation. Residents only stay at the shelter temporarily to avoid institutionalization and are assisted to make the transition towards independent living. They are also each assigned a social worker/counselor to deal with their individual needs.
- Food distribution through which 300 food items are available to meet the needs of various ethnic groups. Halal and non-halal food, allergies, medical conditions, food preferences are considered. Food is distributed to refugees, asylum seekers and torture claimants through numerous food collection sites in Hong Kong, most of which are ethnic minority-run private businesses. Each business is selected through a strict tendering process and is monitored daily by ISS-HK's Food Unit staff to handle complaints, issues and client concerns
- Assistance for transportation to attend appointments with the Hong Kong Immigration Department, legal advisors, ISS-HK caseworkers/staff and doctors, as well as to attend court hearings, food collection at the Food Collection Sites and one religious activity per week.
- Provision of clothing (as required) and toiletries (monthly)

As ALL asylum-seekers, torture claimants, refugee children are allowed to attend the primary and secondary schools in HK. Educational assistance is NOT within the scope of the ISSHK assistance programme.

However once admitted by the schools, all students – including asylum seekers, torture claimants and refugee children- are allowed to apply for Student Financial Assistance (SFAA). The SFAA is a cash allocation to purchase school uniforms, textbooks, pay for the student lunches and school bus. Because it takes 3 months to process the SFAA applications, ISS-HK will advance the funds to the parents and seek reimbursement once the funds are distributed by the government.

It was reiterated at this stage that it costs the Hong Kong government a total of **HKD 118 (approx. 48 MYR) per person per day** to fund all the above services provided by ISS-HK to refugees, asylum seekers and torture claimants living in the community. It was also emphasized that **not all refugees, asylum seekers and torture claimants** require these services and it is only those who cannot manage for themselves in the community (**i.e. the most vulnerable**).

“It costs the Hong Kong government a total of HKD 118 (approx. 48 MYR) per person per day to fund all the above services provided by ISS-HK to refugees, asylum seekers and torture claimants living in the community...”

Ms. Panares then explained how this partnership with HKSWD is implemented in practice:

- HKSWD outsources this work to NGOs via tender process every two years; ISS-HK has won every tender since 2007.
- ISS-HK maintains full transparency of its records and accounts to HKSWD. This is done through monthly statistical reports and complaint logs, as well as regular submission of financial statements. An external firm conducts annual audits of ISS-HK's ASTC program.
- HKSWD can also conduct announced and unannounced visits on ISS-HK's offices and review their files related to the ASTC project. On-site visits are also conducted by other relevant government departments including the Hong Kong Immigration Department, Security Bureau, and Food and Hygiene Department.
- ISS-HK, HKSWD, the Security Bureau and Immigration Department will hold frequent consultations to share information and discuss challenges faced in supporting asylum seekers, refugees and torture claimants in the community.

Some of the key learnings that have emerged from this close government and NGO partnership are:

- Although governments and NGOs may have different approaches and priorities when it comes to refugees, asylum seekers, torture claimants and other migrants, a fundamental step is to agree on shared concerns, visions and commitments and work towards achieving this. For ISS-HK, it was important that a "client-first policy" was implemented, so that the protection needs of the refugee, asylum seeker or torture claimant were prioritized.
- It is also important for both sides to clarify their roles and expectations before embarking on a partnership.

“Although governments and NGOs may have different approaches and priorities when it comes to refugees, asylum seekers, torture claimants and other migrants, a fundamental step is to agree on shared concerns, visions and commitments and work towards achieving this...”

- It is crucial to establish mechanisms to allow for regular dialogue, feedback, performance review and planning for new initiatives during the course of the partnership. Both sides should utilize each other's strengths and acknowledge each other's limitations

- Establishing mutual and respect is also another crucial element for a successful partnership. This includes establishing lines of communication between the parties which are open and honest, but which also respect either party's confidentiality. For example, if one party acts in a way that the other believes is wrong, there must be mutual respect and willingness for both parties to discuss the issue frankly and to work through the challenges together instead of going to the media. Similarly, when media/public criticism arises, the two sides should continue to collaborate as partners, support each other to the fullest extent possible and devise strategies to jointly deal with such criticism.

- Agreements and policies fixed by the two sides should be consistently implemented. Deviations from these agreements or policies should be discussed in advanced and negotiated, rather than made unilaterally by one side.

e. Q&A

The floor was then opened up for questions from participants. The following questions and answers were raised/provided:

- (a) *How many persons does ISS-HK manage in Hong Kong and what is the total undocumented population? What is the long-term solution for this population?*

Ms Panares responded that in Hong Kong, the total number of refugees, asylum seekers and torture claimants is approximately 7,000, of which about 5,600 are handled by ISS-HK. In respect of long-term solutions, some persons choose to repatriate to their own country and are assisted by the International Organization for Migration (IOM) to do so. As Hong Kong is very firm on respecting due process, persons seeking asylum or protection from torture will be allowed to remain in Hong Kong until their claims are exhausted.

- (b) *What happens to unaccompanied and separated children in Hong Kong?*

Ms Panares responded that the Hong Kong Social Welfare Department will usually care for children who are unaccompanied or separated; they will be placed at a government-run shelter. However where a child is in need of halal food, s/he will be referred to the ISS-HK shelter and can remain there until they are 18. ISS-HK also runs a transition shelter for persons who reach 18, but who are not ready to live in the community by themselves yet; the transition shelter helps them to achieve this goal.

Mr Mitchell also added that under the CRC and in accordance with what is in the best interests of the child, children should always be allowed to remain with their parents or guardians. If a separated child is detained, s/he should be released to his/her parents or guardians living in the community as soon as possible. Where children are intercepted with their families, the whole family should not be detained and instead supported in the community (ideally, under the shared responsibility of NGOs and government). This is a good practice that is already happening in several countries.

- (c) *What has been the response from Hong Kong citizens to these large numbers of undocumented persons living in the community? Particularly as Hong Kong has large numbers of people living in poverty?*

Ms Panares responded by affirming that Hong Kong is not a rich country and that many of its citizens live in very poor conditions and even “cage homes”. Although local citizens are upset over the amount of assistance received by refugees, asylum seekers and torture claimants, the government is concerned with respecting due process. The judiciary has also played an important role in ensuring that due process is upheld.

Mr Mitchell also added that as governments are transitioning towards adopting and implementing ATDs, it is crucial to ensure that those who are not-detained/released under an ATD model are well integrated with the local community, and that they are able to support themselves or receive sufficient assistance. In some countries, undocumented persons are forced to live within specific enclaves with limited freedom of movement; this simply helps perpetuate a view that they have committed a criminal act and/or need to be segregated from the rest of community.

- (d) *How does the Immigration Department of Malaysia deal with UAMs? What is the process for tracing their family members and reuniting them? What role does UNHCR play in assisting to get UAMs out of the detention depot and placing them in the community?*

Mr Jose Alvin C. Gonzaga from UNHCR Malaysia explained that there are over 100,000 refugees and asylum seekers registered in Malaysia and approximately 25,000 of these are children. Unlike Hong Kong where the government now transitioning towards conducting its own refugee status determination (RSD), it is UNHCR who conducts RSD in Malaysia. UNHCR will give priority to UAMS, but the agency has limited capacity to provide assistance to them. Instead, they will place UAMS with their ethnic communities and conduct home visits to monitor their situation. Counselling will also be provided where needed.

Encik Sabri said that although he did not have statistics on how many UAMs are in detention depots, he did not believe their numbers to be large as most children are detained with their parents. If children are brought alone to the detention depots, immigration officers will try to locate the family members within other depots and will also seek help from UNHCR and JKM.

- (e) *There have been some instances where UAMs have been detained in Malaysian depots with adult strangers. Is there any cooperation with the Department of Social Welfare to look into this?*

Mr Chua Choon Hwa (Deputy Under Secretary) from the MWFCDC clarified that placements of children in JKM shelters is usually only for Malaysian children and all placements can only be carried out pursuant to a court order. It is in principle agreed that as Malaysia has acceded to the CRC, there should be rules protecting children even in the immigration depots. Where the Immigration Department has concerns over particular children in the depots, they can always communicate this to the MWFCDC branches in the relevant state.

Dato Yasmeen Shariff, member of the UN Committee on the Rights of the Child also stressed that it is important for Malaysia, as a signatory to the CRC, to protect unaccompanied and separated children, particularly those in places of detention. The MWFCDC is currently looking into Malaysia's obligations under the CRC at the highest level. Dato' Yasmeen also emphasized that although the process of reporting to the UN Committee on the Rights of the Child is important, Malaysia should also strive to ensure protection for all children within its borders, regardless of the reporting process. Necessary steps should be put in place to bring the treatment of all children in line with the CRC, including those detained in depots. Measures could

include allowing for detention monitoring visits on a regular basis and developing ATDs for children.

Mr. Quek Kia Ang (Principal Assistant Director) from JKM explained that children who are unwanted or abandoned will be placed in government shelters until they can be adopted. JKM works closely with the Immigration Department in relation to anti-trafficking work and runs a safe house in Johor Bahru and Rembau. Non-citizens including children who are trafficked are placed in the trafficking shelter for 3 months and then referred to the Immigration Department whereas citizens will be held for 2 years.

f. Session 4- Malaysian legal and policy framework

MrDaniel Lo - Special Officer – Human Rights Office of YB Senator Datuk Paul Low Seng Kuan, Prime Minister’s Department -Mr Lo explored the opportunities within the Malaysian legal and policy framework for the development and implementation of ATDs. Mr Lo began by explaining the ATD options already provided for in Malaysian law and policy, namely:

- The use of exemption orders under section 55 of the Immigration Act
- The granting of special passes that are valid for 1 month and renewable for 3 months (noting that in practice, there is discretion to renew these beyond 3 months)
- The use of administrative discretion to regularize a person’s stay in the country or to prevent the arrest or detention of a person. For example, law enforcement agencies have been directed (at least in principle) not to detain refugees or asylum seekers registered with UNHCR
- The issue of social visit passes with the ability for the holder to work. These have been issued to migrant workers who have become undocumented following dismissal from their employment. Social passes are generally valid for 3 months
- Orders under ATIP – there are ongoing discussions between KDN and MAPO about individuals who can be diverted somewhere other than the trafficking shelters

Mr Lo then outlined the further steps that could be taken to strengthen the legal and policy framework in Malaysia:

- Ensure that the treatment of *all*:
 - children in Malaysia is in compliance with the CRC – this should be a clear goal for Malaysia to work towards
 - women in Malaysia is in compliance with the Convention on the Elimination of Discrimination against Women (CEDAW)
 - refugees and trafficked persons is in line with international commitments
- Ensure that Malaysia is on track to fulfil the ASEAN Community Vision 2015.

Encik Mohd Fauzi bin Mustafa (Principal Assistant Secretary) from the Ministry of Home Affairs was also invited to speak and share his perspectives on the need and possibilities for developing ATDs in Malaysia. He began by stressing that the National Security Council (MKN) under the Prime Minister's Department is the government agency in charge of determining the legal and policy framework for refugees, asylum seekers and irregular migrants.

Encik Fauzi explained that he was not speaking officially on behalf of KDN. However, he could see the benefit of adopting ATDs given the cost of running detention depots. He also suggested that SUHAKAM document the findings and discussions from the roundtable and table these to KDN and MKN for further discussion. Encik Fauzi also stressed that in considering ATDs, the government would look at the pros and cons of each program and determine their suitability for the Malaysian context. Although some policies and programs may work well in other countries, they may not work in Malaysia due to limited resources (manpower, finances, etc.) and the large numbers of refugees, asylum seekers and irregular migrants in Malaysia. Also, community models have to take into account the local culture; refugees and migrants in the community have to be culturally assimilated in order for an ATD to work.

“The formation of a working group between the government, SUHAKAM and NGOs would be a good platform for the exchange of ideas and experiences, including from other countries...”

Encik Fauzi concluded by stating that the idea of ATDs, including the HK model, was an interesting idea to explore. He also agreed that the formation of a working group between the government, SUHAKAM and NGOs would be a good platform for the exchange of ideas and experiences, including from other countries.

g. Session 5- Breakout group to discuss ATDs in Malaysia – possibilities and challenges

Participants were then divided into 4 groups to reflect upon the presentations and discuss the following questions:

1. Why should we have ATDs?
2. Why should we not have ATDs?
3. If we are to implement ATDs, what are the groups that should be considered?
4. Of these, which group is the most vulnerable?
5. For this group, what are the possible ATDs we could have in Malaysia?

A summary of responses to the above questions were as follows:

Q 1 - Why should we have alternatives to detention?

- Difficulty in managing immigration depots – overcrowding; running the depot is expensive (whereas ATDs are more cost effective); detainees are hard to manage (particularly as depot officers are not trained as social workers); and the psychological impact of detention on detainees.
- ATDs would help to ease the burden on depot officers by reducing the size of the population detained. Currently depot officers work long hours in a stressful environment and the staff-detainee ratio is not ideal.
- Detention is not actually deterring people from coming to Malaysia as they are still coming despite immigration raids.
- Using ATDs such as screening and assessment and community models would allow the Malaysian government to better differentiate between the different migrant groups that are here, and therefore manage the populations more effectively.
- Detention also does not address the government's concerns over general security because there is an observation that many of those detained and deported end up coming back to Malaysia anyway. The focus should therefore not be on detention and deportation only, but also on how irregular migrants can be better managed in Malaysia
- In relation to children, the use of ATDs would help them better integrate into society, foster the development of the child and also bring Malaysia further into line with the CRC
- Developing ATDs in Malaysia could also set an example for its neighbours, including those in ASEAN
- Establishing community models as ATDs could help support the local economy by providing business to the locals, such as in Hong Kong – e.g. business for food suppliers, landlords, etc
- ATDs mean that the burden of managing irregular migrants will not only fall on the Immigration Department – they will involve more stakeholders such as other government ministries, SUHAKAM, and NGOs

Q 2 - Why should we not have alternatives to detention?

- There is a need to protect irregular migrants. If they are not kept in centralized places, they might be manipulated because they have no documents.
- Also, being in centralized places means that the population is easier to manage. This is important if the long-term goal is to repatriate people back to their home countries. It is also important in the context of Malaysia where the number of irregular migrants is so large.
- In detention depots, detainees are provided with basic needs such as food, shelter, medicine, etc.
- Detention will deter future refugees and irregular migrants from coming (though it was discussed that this does not seem to be working and people are still coming to Malaysia)
- Detention will prevent disease and social problems from spreading in the community

Q 3 and 4- If we are to implement alternatives to detention, what are the groups that should be considered? Of these, which group is most vulnerable?

- All breakout groups agreed that children were the most vulnerable group. This includes accompanied, as well as unaccompanied and separated children
- Other vulnerable groups identified were: women (including single women, pregnant and nursing women); the elderly; persons with physical and mental health issues; refugees and asylum seekers; stateless persons; persons with disabilities; and transgender people

Q 5 - For this group, what are the possible alternatives to detention?

There was general consensus that the best ATD would be for children not to be detained at all. In order to attain that ultimate goal, the following ideas/issues were raised:

- There are many question marks over which government agency should be responsible for UAMs and separated children. However it was agreed that this issue is best discussed and resolved collaboratively through a working group. It is also noted that it is difficult to put one government agency (e.g. the Department of Immigration or JKM) under so much pressure, especially when they are overstretched already. The working group should look to different government agencies and NGOs to partner together to take different roles and responsibilities
- An ATD model could be applied to all children who are currently in detention, as well as those who are *at risk* of detention (that is, they could be diverted to the ATD instead of being arrested and brought to a detention depot). Some participants stressed this second option is very important because once children are placed in a depot, it can take some time before they are released. One way of achieving this would be e.g. for JKM or NGOs to be present at immigration raids. When enforcement officers encounter children, the care for these children can pass straight to the DSW or the NGOs without the need for the child to be arrested and taken to a depot or police station.
- An ATD for UAMs in Malaysia could take many different forms, including government or NGO-run homes, shelters that are run by ethnic communities, fostering, adoption, etc. The purpose of the ATD however, would be to allow children to receive protection and care, including access to education and health, as well as assistance to facilitate their resettlement to a third country or repatriation to their home country. The details of what an ATD project will look like and how feasible it is within the Malaysian context will need to be discussed by the working group.
- As is being done in other countries, the government can outsource actual care arrangements to NGOs. If this happens, it will be necessary to regulate the NGOs to ensure they are providing the necessary services and that the child is receiving appropriate protection and assistance.

“There was general consensus that the best ATD would be for children not to be detained at all...”

AGENDA
TUESDAY 12TH NOVEMBER 2013 AT SUHAKAM

Time	Session	Presenter/ Facilitator
9:00	Opening Remarks and Introductions	SUHAKAM KDN
9:20	Malaysian Immigration Department presentation on current situation in immigration depots, with specific focus on children and other vulnerable groups Q&A	Mr Mohd. Sabri b. Zainal Commandant, Immigration Detention Center of Juru, Penang
9:50	Introduction to alternatives to detention and international standards - Benefits of alternatives to detention, including recent global trends and best practice examples. Immigration detention of children – international standards and developments	Grant Mitchell, Director of International Detention Coalition
10:40	Tea break	
11:00	Alternatives to detention – the Hong Kong model	Ms Adrielle Panares Programme Director of the Asylum Seekers, Torture Claimants and Refugees Project at International Social Services Hong Kong
12:15	Question & Answer Session	
12:30	Lunch	
1:30	The Malaysian legal and policy framework – opportunities for alternatives to detention	Mr Daniel Lo Soo Jeng Special Officer – Human Rights Office of YB Senator Datuk Paul Low Seng Kuan Prime Minister's Department
2:00	Breakout group to discuss ATDs in Malaysia – possibilities and challenges Reporting back to plenary	All
3:30	Tea Break	
3:45	Summary of discussions and next steps	Mr Daniel Lo Soo Jeng Special Officer – Human Rights Office of YB Senator Datuk Paul Low Seng Kuan Prime Minister's Department
4:00	Wrap-up and Close	Mr James Nayagam Commissioner of SUHAKAM