

ANNEX A

OPERATIONAL GUIDELINES TO SUPPORT TRANSFERS AND RESETTLEMENT

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1.0 TRANSFER PROCESS FROM AUSTRALIA TO MALAYSIA

1.1 IN AUSTRALIA

1.1.1 INITIAL HANDLING IN AUSTRALIA

- (a) Biodata collected for each Transferee.
- (b) Biometrics (photo and finger prints) collected for each Transferee.
- (c) Nominal roll (list of names) prepared for the group of Transferees.
- (d) Australian Authorities complete checks against Australian "watch list".
- (e) Preparation of Transferee removal documents by Australian authorities.
- (f) Medical completed for each Transferee to ensure they are 'fit to travel'.
- (g) Transferees counselled regarding transfer process and briefed on what to expect in Malaysia.

1.1.2 PRE-TRANSFER NOTIFICATION PROCESS

- (a) Copy of removal document, biometrics and nominal roll provided by Australian authorities to Malaysian Ministry of Home Affairs, Immigration Department of Malaysia, and Royal Malaysian Police.
- (b) Malaysian authorities complete checks against the Malaysian prohibited immigrants list, terrorism list and international wanted list and notify Australian authorities of any Transferees of concern.
- (c) Notification by Australian authorities to Malaysian authorities of proposed transfer of a group.
- (d) Acknowledgement by Malaysian authorities to Australian authorities of transfer ('green light for transfer') unless there is a direct match against the Malaysian prohibited immigrants list, terrorism list or international wanted list.
- (e) Provision by Malaysian authorities to Australian authorities of reception details for group including date, time and location of arrival in Malaysia.
- (f) Malaysian authorities will ensure exemption orders under the Malaysian Immigration Act 1959/63 and the Passport Act 1966 are in place.
- (g) Flight clearances obtained for Australian aircraft from Malaysian authorities.

- (h) Pre-departure counselling provided by Australian authorities to Transferees regarding the transfer process and briefing on what to expect in Malaysia.

1.2 TRANSFER TO MALAYSIA

1.2.1 ON AIRCRAFT

- (a) Transferees embark aircraft accompanied by Australian escorts including Australian immigration officers.
- (b) Further counselling provided by Australian authorities to Transferees during flight, including further briefing on what to expect in Malaysia.
- (c) Provision of the Transferee removal documents for each Transferee to Malaysian authorities at time of disembarkation.

1.3 TIMING OF TRANSFER FROM AUSTRALIA TO MALAYSIA

Malaysia and Australia aim to achieve transfer of each group of Transferees within 72 hours of their arrival in Australia.

1.4 ARRIVAL IN MALAYSIA

1.4.1 HANOVER OF TRANSFEREES TO MALAYSIAN AUTHORITIES

- (a) Commercial charter aircraft received at Kuala Lumpur International Airport.
- (b) Transferees will be encouraged to disembark voluntarily.
- (c) Transferees will be handed over to Malaysian authorities at the door of the aircraft and disembark.
- (d) If any Transferee does not disembark voluntarily:
 - Australian escorts will escort the Transferee to the door of the aircraft and hand control of the Transferee to Malaysian authorities;
 - Malaysian authorities will escort the Transferee from the door of the aircraft to complete disembarkation.

2.0 POST ARRIVAL ARRANGEMENTS FOR TRANSFEREES IN MALAYSIA

2.1 PROCESSING ARRANGEMENTS ON ARRIVAL AT KUALA LUMPUR INTERNATIONAL AIRPORT

2.1.1 INITIAL PROCESSING OF TRANSFEREES AT AIRPORT

- (a) Immigration Department of Malaysia, Royal Malaysian Police, health, customs and quarantine officials receive Transferees.
- (b) Following completion of initial processing Transferees are taken to the Transit centre. (Noting that in exceptional cases some Transferees may need to be taken to an alternative location)

2.1.2 FURTHER PROCESSING OF TRANSFEREES AT THE TRANSIT CENTRE

- (a) Malaysian authorities complete processing of Transferees involving screening by the Royal Malaysian Police and the collection of biometric data from Transferees.
- (b) IOM completes health assessment and identifies vulnerable Transferees.
- (c) IOM and UNHCR provide briefing to Transferees to identify pathways regarding Transferees' future options.
- (d) UNHCR commence registration for Transferees who seek asylum in accordance with pathways.
- (e) IOM commence processing for Transferees who seek assisted voluntary return in accordance with pathways.
- (f) Malaysian authorities authorise departure of individual Transferees from Transit centre generally within forty-five (45) days (other than in exceptional circumstances).

2.2 TRANSFEREE PATHWAYS

2.2.1 TRANSFEREE SEEKS VOLUNTARY RETURN

- (a) IOM provides advice to Transferee who seeks to depart Malaysia as independent voluntary returnee; or
- (b) IOM completes processing of Transferee who seeks to depart Malaysia under IOM assisted voluntary return arrangements:

- under the assisted voluntary return arrangements, IOM will assist the Transferee to obtain a travel document; arrange the flight; assist the Transferee to obtain an exit permit from Malaysian authorities; and make arrangements for the Transferee to receive any reintegration or relocation assistance where appropriate.
- (c) Transferee permitted to remain in Malaysia pending voluntary departure.
- (d) Transferee departs Malaysia.

2.2.2 TRANSFEESEE SEEKS ASYLUM

- (a) Transferee has access to UNHCR to make asylum claim and UNHCR commences registration process.
- (b) Transferee permitted to remain in Malaysia under exemption order.
- (c) Transferees will have ongoing access to self-reliance opportunities.
- (d) UNHCR completes registration process.
- (e) UNHCR undertakes Refugee Status Determination.

2.2.3 TRANSFEESEE DOES NOT SEEK ASYLUM AND DOES NOT SEEK VOLUNTARY RETURN

- (a) Australian authorities consider Transferee's broader claims to protection under other human rights conventions.
- (b) If a Transferee is determined to have broader claims for international protection, Australia will make suitable alternative arrangements for the removal of the Transferee from Malaysia so as to ensure they are not refouled.
- (c) If a Transferee is determined not to have broader claims for international protection they will be subject to involuntary removal/deportation under Malaysian law.
- (d) Australian authorities will provide assistance to Malaysian authorities to facilitate such returns as follows:
 - financial assistance in accordance with Clause 9 of this Arrangement;
 - liaison with the country of origin, if appropriate.
- (e) Transferee departs Malaysia.

2.3 REFUGEE STATUS DETERMINATION PROCESS

2.3.1 TRANSFEREE FOUND TO BE A REFUGEE

- (a) Transferee permitted to remain in Malaysia and will not be liable to being detained and arrested due to their ongoing presence in Malaysia under this Arrangement.
- (b) Transferee will have ongoing access to self-reliance opportunities.
- (c) UNHCR provides refugee (Transferee) with counselling on durable solutions.
- (d) UNHCR refers refugee (Transferee) to resettlement country for consideration of resettlement, consistent with usual UNHCR arrangements.
- (e) Transferees should not be given any preferential treatment in the order of processing their claims in Malaysia and they should receive no processing or resettlement advantage as a result of having undertaken irregular movement to Australia.
- (f) Transferee departs Malaysia for resettlement country.

2.3.2 TRANSFEREE FOUND NOT TO BE A REFUGEE

- (a) Voluntary return is the preferred option:
 - for Transferee agreeing to voluntary return, IOM will provide advice on independent voluntary return or process the Transferee under IOM assisted voluntary return arrangements;
 - under the assisted voluntary return arrangements, IOM will assist the Transferee to obtain a travel document; arrange the flight; assist the Transferee to obtain an exit permit from Malaysian authorities; and make arrangements for the Transferee to receive any reintegration or relocation assistance where appropriate.
- (b) Where the Transferee does not agree to voluntary return:
 - Australian authorities consider Transferee's broader claims to protection under other human rights conventions;
 - If a Transferee is determined to have broader claims for international protection, Australia will make suitable alternative arrangements for the removal of the Transferee from Malaysia so as to ensure they are not refouled;
 - If a Transferee is determined not to have broader claims for international protection they will be subject to involuntary removal/deportation under Malaysian law.

- (c) Australian authorities will provide assistance to Malaysian authorities to facilitate such removal/deportation as follows:
 - financial assistance in accordance with Clause 9 of the Arrangement;
 - liaison with the country of origin, if appropriate.
- (d) Transferee departs Malaysia.

2.3.3 TRANSFEE DECIDES DURING THE UNHCR REFUGEE STATUS DETERMINATION PROCESS TO DEPART MALAYSIA

- (a) Transferee departs Malaysia independently; or
- (b) Transferee approaches IOM/UNHCR for assistance to be processed under assisted voluntary return arrangements.
- (c) As the Transferee is a registered asylum seeker or refugee, UNHCR undertakes an interview to confirm the Transferee's intention for voluntary return.
- (d) Following UNHCR confirmation of intended voluntary return, UNHCR refers the Transferee to IOM for processing under the IOM assisted voluntary return arrangements.
- (e) IOM will assist the Transferee to obtain a travel document; arrange the flight; assist the Transferee to obtain an exit permit from Malaysian authorities; and make arrangements for the Transferee to receive any reintegration or relocation assistance where appropriate.
- (f) Transferee departs Malaysia.

3.0 SITUATION OF TRANSFEEES DURING TEMPORARY STAY IN MALAYSIA

Following departure from the Transit centre, Transferees will enjoy an adequate standard of treatment, including having access to the same support as other asylum seekers and refugees in the community. In limited circumstances modest backup 'safety net' provisions will be available through IOM on an 'as needs' basis.

If detained on arrival, Transferees should be held only for the period necessary to confirm identity or undertake security or other checks. This does not exclude detention in the context of criminal prosecution.

Detailed guidance concerning the operation of the Arrangement as it relates to Transferees will be provided to law enforcement agencies and other relevant authorities to ensure:

- (a) the circumstances of the Transferees under this arrangement are clearly understood;
- (b) that their treatment will be in accordance with this Arrangement; and
- (c) that they will be provided with immediate access to the UNHCR /IOM hotline so that their status as a Transferee can be confirmed

3.1 ACCOMMODATION FOLLOWING DEPARTURE FROM THE TRANSIT CENTRE

- (a) Generally Transferees will be allowed to reside in the community.
- (b) Transferees will be encouraged to move directly into private accommodation arrangements.
- (c) For those Transferees unable to move directly into private accommodation, IOM will provide short term assistance, for example:
 - in a hostel/hotel;
 - for a period of approximately one (1) month;
 - following the first month, IOM will assess a Transferee's requirement for accommodation on a case-by-case basis;
 - Transferees will be encouraged to move into private accommodation arrangements in the community.

3.2 SELF RELIANCE AND BASIC SUPPORT

- (a) Transferees will have ongoing access to self reliance opportunities particularly through employment.
- (b) Transferees will be encouraged to become self sufficient as soon as possible.
- (c) IOM will pay Transferees a support payment to cover living costs for the first month in the community:
 - IOM will take account of the rates of payment UNHCR already makes to vulnerable refugees where applicable;
 - the support payment will be discounted by an accommodation component if the Transferee is in short-term IOM accommodation;
 - following the first month, IOM (or UNHCR for registered asylum seekers) will make an assessment on a case-by-case basis of any further need for financial assistance consistent with UNHCR's current practice.

3.3 EDUCATION

- (a) Transferees of school age will be permitted access to private education arrangements in the community, including those supported by UNHCR.
- (b) Where such arrangements are not available or affordable, school age Transferees will have access to informal education arrangements organised by IOM.

3.4 MEDICAL SERVICES

- (a) Transferees will have access to an initial health assessment by IOM to guide any future medical support.
- (b) Transferees will have access to basic medical care under arrangements UNHCR has for asylum seekers and refugees with some private clinics.
- (c) For emergency access, UNHCR will refer cases to IOM who will use existing IOM arrangements with a private hospital.

3.5 VULNERABLE TRANSFEREES

- (a) IOM's initial health assessment will identify vulnerable cases at the outset.
- (b) Transferees will have access to the existing arrangements which UNHCR has in place for identifying and supporting vulnerable cases and a backup 'safety net' will be provided by IOM:
 - existing UNHCR services provide support arrangements for minors, persons who have suffered torture or trauma, and other persons assessed as vulnerable by UNHCR.
- (c) Transferees will have access to an existing UNHCR 'hotline' so they can identify any issues impacting their welfare. UNHCR will provide support through its existing arrangements to Transferees following a UNHCR assessment, consistent with existing practice. As a backup, UNHCR will refer any Transferees who require further support to IOM who can provide early intervention and support.

4.0 RESETTLEMENT OF REFUGEES FROM MALAYSIA TO AUSTRALIA

4.1 GENERAL

- (a) Australia will resettle 4,000 refugees from Malaysia over four (4) years commencing from the date of the Arrangement at a rate of approximately 1,000 per year, (although recognising that less may be settled in the first year and any shortfall will be taken up in subsequent years).
- (b) The 4,000 persons must be able to establish they entered Malaysia and were registered by UNHCR prior to the date of signing of the Arrangement and have remained in Malaysia.
- (c) Consistent with existing arrangements, UNHCR will refer to Australia refugees which UNHCR consider are a priority for consideration of resettlement.
- (d) The Australian Government, in conjunction with UNHCR, will take into account any views expressed by the Malaysian Government regarding the broad composition of the 4,000 refugees to be resettled.
- (e) Quarterly statistical reporting will be provided by Australian authorities to the Joint Committee to enable tracking of resettlement targets.

4.2 RESETTLEMENT PROCESS

- (a) UNHCR refers refugees to the Australian High Commission for resettlement using the Resettlement Registration Form.
- (b) The Australian High Commission will confirm that the referral falls within the terms of the Arrangement.
- (c) The Australian High Commission receives and processes the Refugee Visa applications.
- (d) The Australian High Commission completes identity, health (through IOM), character and security checks as part of the visa process.
- (e) The Australian High Commission approves the application and issues the travel document.
- (f) IOM delivers Australian Cultural Orientation Program to refugees in preparation for departure.
- (g) DIAC in Australia provides the Australian High Commission with advice regarding settlement arrangements for the refugees (accommodation and support services on arrival).
- (h) IOM completes exit permit, travel arrangements and facilitates the departure of the refugees from Malaysia.

5.0 JOINT COMMITTEE AND ADVISORY COMMITTEE

5.1 JOINT COMMITTEE

5.1.1 TERMS OF REFERENCE

- (a) To oversight the day to day operational arrangements under the Arrangement, including:
 - management of transfer arrangements;
 - oversight of the welfare of Transferees;
 - ensure funding is expended appropriately;
 - oversight provision of services by service providers;
 - obtain statistical data and other information on refugee status determinations and protection obligations assessments;
 - oversight any liability issues that may be raised in the course of implementation of the Arrangement;
 - receive reports from Australia regarding progress with resettlement of the 4,000 refugees
 - address any concerns of Transferees.

5.1.2 MEMBERSHIP

- (a) Membership includes representatives of the Ministry of Home Affairs and the Department of Immigration and Citizenship:
 - other representatives from Australian and Malaysian Government agencies, UNHCR and IOM could be co-opted as required.

5.1.3 MEETINGS

- (a) Meetings will take place in Kuala Lumpur at least weekly at outset and then monthly once arrangements settle.

5.2 ADVISORY COMMITTEE

5.2.1 TERMS OF REFERENCE

- (a) To provide advice to Ministers on issues arising out of the implementation of the arrangement:
 - strategic, rather than operational oversight of the arrangements;
 - regular and exception reporting;

- a body to which Ministers may refer issues for consideration.
- (b) Advise Ministers on matters referred for consideration.

5.2.2 MEMBERSHIP

- (a) Membership, includes:
 - two representatives from each of the Malaysian and Australian governments, and to be co-chaired by Malaysia and Australia;
 - subject to their agreement a representative from each of the UNHCR and IOM;
 - any other representatives as agreed by Malaysia and Australia.

6.0 OTHERS

6.1 COUNTING OF THE 800 TRANSFEREES

In calculating the number of persons transferred to Malaysia, where it is established that a person has been previously transferred pursuant to the Arrangement, their second and subsequent transfer will not be counted as a part of the 800 Transferees.

6.2 AMENDMENT OF THESE GUIDELINES

Reflecting the likely need to adjust these operational guidelines in the light of practical experience, the Participants may amend the Guidelines by agreement in writing as required.