



MALAYSIA: ISSUES RELATED TO THE IMMIGRATION DETENTION OF CHILD MIGRANTS, REFUGEES, AND ASYLUM

**SUBMISSION TO THE UN COMMITTEE
ON THE RIGHTS OF THE CHILD (100TH
SESSION, JANUARY 2026)**

SUBMITTED: DECEMBER 2025

MALAYSIA: ISSUES RELATED TO THE IMMIGRATION DETENTION OF CHILD MIGRANTS, REFUGEES, AND ASYLUM SEEKERS

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1. INTRODUCTION

The Global Detention Project (GDP), the Malaysia-based North South Initiative (NSI), and Myanmar Ethnic Organization (MEO) welcome the opportunity to provide information relevant to the review of Malaysia's second to fourth periodic reports during the 100th session of the Committee on the Rights of the Child.

This submission focuses on Malaysia's treatment of child refugees, asylum seekers, and migrants, with particular emphasis on the widespread and deeply harmful practices of child detention and deportation.

A core consideration for making this submission has been the Committee's crucial and transformative support for the norm prohibiting the immigration detention of children. The Committee's position is cogently laid out in the Joint General Comment (No. 23/No.4), issued with the Committee on Migrant Workers in 2017, which affirms that detention of children for immigration purposes is never in their best interests and thus represents a child rights violation in every instance, with no exceptions. As the General Comments states:

"[C]hildren should never be detained for reasons related to their or their parents' migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice."

We encourage the Committee, during its review of Malaysia's implementation of the Convention, to adhere to the guidance it provides in Joint General Comment (No. 23/No.4) and thereby recommend that the state party immediately cease the immigration detention of children, as well as the detention of families with children.

2. CONTEXT

Malaysia's immigration enforcement regime—which includes widespread raids and arrests, detention, forced removals, criminal prosecution, and corporal punishment—is one of the world's most punitive, arbitrary, and harmful detention systems. Children, like adults, are subjected to these enforcement measures, exposing them to acute risk of abuse and rights violations.

Despite its poor human rights record, the country is an important destination for migrants, refugees, and asylum seekers. The Migration Data Portal reports that as of 2024, Malaysia

hosted approximately 3.8 million international migrants.¹ Meanwhile, according to UNHCR data, as of October 2025 the country hosted 211,360 refugees and asylum seekers, 64,801 of whom were children.² The majority of the country's refugees and asylum seekers originate from Myanmar (189,760), with Rohingya refugees forming the single largest sub-group (124,123).³ The route to Malaysia is often fraught with danger, with many reaching the country by boat after perilous sea journeys.⁴

The Malaysian government has not ratified the 1951 Refugee Convention or its 1967 Protocol, and continues to handle refugees through an immigration control framework rather than rights-based system. As a result, all refugees are treated as “undocumented migrants” and are subject to arrest, detention, prosecution, and deportation under the Immigration Act. While UNHCR is permitted to conduct refugee status determination (RSD) and to provide refugees with assistance, registration with UNHCR does not confer legal immigration status and registered refugees remain vulnerable to aggressive immigration practices.⁵

Every year, the Malaysian government detains thousands of irregular migrants, refugees, and asylum seekers—amongst them children—in the country's network of detention facilities where detainees, particularly children, are at serious risk of physical and psychological harm.

In March 2024, Malaysian authorities launched a “voluntary Migration Repatriation Programme,” offering undocumented migrants the option to leave the country voluntarily without facing arrest or penalties. But alongside this, authorities have intensified their efforts to apprehend anyone who remains undocumented—ramping up raids and arrests since 1 January 2025 as part of a “year of enforcement.”⁶ According to Wan Mohammed Saupee, Kuala Lumpur's Immigration Director, “Our goal is to create an ecosystem that is uncondusive for illegal immigrants.”⁷

3. RELEVANT LEGISLATION

To-date, Malaysia has not removed its reservation to Article 37 of the Convention (prohibiting torture and regulating deprivation of liberty situations for children). Instead, it notes in its State Report that “Malaysia still consider it necessary to maintain the said reservations and declaration at this juncture.”

Malaysia's [Immigration Act 1959/63 – Act 155](#) makes all irregular entry and stay in the country a criminal offense, punished with a fine of up to RM 10,000 (approximately 2,430 USD), imprisonment for up to five years, and in the case of adult males up to six strokes of

¹ Migration Data Portal, “Total Number of International Migrants at Mid-Year 2024,” accessed 9 December 2025, https://www.migrationdataportal.org/international-data?i=stock_abs_&t=2024

² UN High Commissioner for Refugees, “Figures at a Glance in Malaysia,” accessed 11 December 2025, <https://www.unhcr.org/my/what-we-do/figures-glance-malaysia>

³ UN High Commissioner for Refugees, “Figures at a Glance in Malaysia,” accessed 11 December 2025, <https://www.unhcr.org/my/what-we-do/figures-glance-malaysia>

⁴ There have been numerous cases of boats capsizing, and significant numbers of refugees have drowned. See: Al Jazeera, “Eleven Dead, Hundreds Missing After Refugee Boat Sinks off Malaysian Coast,” 9 November 2025, <https://www.aljazeera.com/news/2025/11/9/one-dead-dozens-missing-after-migrant-boat-sinks-off-malaysia-coast>

⁵ Forced Migration Review, “Refugees and Space in Urban Areas in Malaysia,” accessed 11 December 2025, <https://www.fmreview.org/nah/>

⁶ New Straits Times, “Immigration Dept to Resume Migrant Repatriation Programme on May 19,” 16 May 2025, <https://www.nst.com.my/news/nation/2025/05/1216998/immigration-dept-resume-migrant-repatriation-programme-may-19>

⁷ Bernarnews, “Immigrants Line Up To Leave Malaysia Before Repatriation Deadline,” 13 December 2024, <https://www.benarnews.org/english/news/malaysian/repatriation-deadline-12132024125323.html>

the cane. The same legislation also provides for the detention of any person who is ordered to be removed from the country (Section 34), and that they can be detained “in any prison, police station or immigration deport, or in any other place appointed for the purpose by the Director General” (Section 34(3)).

The law does not set a detention time limit. Instead, Section 34(1) of the Immigration Act states that persons can be detained “for such a period as may be necessary,” meaning that non-nationals can be detained indefinitely.

Access to justice for those who are wrongfully arrested, charged, detained and deported, is extremely difficult due to the existence of an ouster clause (Section 59A) in the Immigration Act 155. This section provides that no person or member of a class of persons can be heard before the Minister, Director General or State Authority (if it is an East Malaysian State) that makes a decision against them. Section 59A further prohibits judicial review of any act or decision made by the Minister except regarding questions about compliance to procedural requirements or legislations governing this Act. There have been no debates on reforms to remove this section, even though in a minority judgement in the Federal Court of Malaysia (appellate jurisdiction) civil appeal no:01(f)-5-03/2019(w) **Maria Chin V Ketua Pengarah Imigresen & Menteri Dalam Negeri**, a judge had criticized the clauses as unconstitutional.⁸

Critically, the Immigration Act does not differentiate between adults and children, and does not exempt anyone, including children, from immigration detention. Moreover, the [2003 Immigration Regulations](#) specifically mention the detention of children, with Regulation 11 stating that children under the age of 11 are to be detained with either of their parents. However, there is no formal age determination procedure in place, with age instead assessed by appearance and physical stature.⁹

This is a clear breach of the best interests principle enshrined in the Convention, which the Committee has repeatedly underscored, including in its 2017 Joint General Comment No. 23/No.4 (issued with the Committee on Migrant Workers) which affirms that “children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.”

In the Committee’s List of Issues, Malaysia was asked to provide information about the measures taken “to prohibit the detention of children for migration-related reasons.”¹⁰ However, the State Party failed to address this in its State Report. Instead, as a coalition of NGOs noted in 2023, “there have been no meaningful attempts by the Malaysian

⁸ Civil Appeal No. 01(f)-5-03/2019(W), “Summary of Grounds of Judgment of Chief Justice Tengku Maimun Binti Tuan Mat,”

[https://www.kehakiman.gov.my/sites/default/files/documents/Ringkasan_Media/2021/Maria%20Chin%20-%20Press%20Summary%20\(Chief%20Justice\)%20\(8.1.2021\).pdf](https://www.kehakiman.gov.my/sites/default/files/documents/Ringkasan_Media/2021/Maria%20Chin%20-%20Press%20Summary%20(Chief%20Justice)%20(8.1.2021).pdf)

⁹ International Detention Coalition et al, “Impact of Prolonged Immigration Detention on Rohingya Families and Communities in Malaysia,” May 2023, https://mixedmigration.org/wp-content/uploads/2023/05/277_Impact-of-detention.pdf

¹⁰ Committee on the Rights of the Child, “List of Issues in Relation to the Combined Second to Fourth Periodic Reports of Malaysia,” 6 March 2025, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=hpH63xy4LmMea%2FPq4hjM%2Fc0bu%2B7PkuTstLwajEvAREJWl2bFK606TqvhRFvng8oz1xM3UsTMEZ06t%2BUkIECwwA%3D%3D>

government to bring the Immigration Act in line with international human rights law and standards.”¹¹

Moreover, Malaysia’s prosecution and imprisonment of non-citizens for breaches of its immigration laws is excessive, disproportionate, and thus arbitrary. This has been clearly established by the UN Working Group on Arbitrary Detention in its “Revised Deliberation No. 5 on Deprivation of Liberty of Migrants,” which provides: “The irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the legitimate interests of States in protecting their territories and regulating irregular migration flows.”

In light of the above information, we encourage the Committee to issue the following recommendations:

- **Immediately amend the Immigration Act 1959/63 and the 2003 Immigration Regulations to explicitly prohibit the immigration of all children, in line with CRC General Comment No. 23/No.4 (2017)**
- **End the criminalisation of irregular entry and stay for children and their parents, and ensure that no child is subjected to, or affected by, criminal prosecution for migration-related reasons.**
- **Establish safe, community-based reception and care arrangements for children and their families that prioritise the best interests of the child.**
- **Introduce a right-compliant age determination procedure, and ensure that no child is detained or treated as an adult based on appearance alone. Pending assessment, children should be given benefit of the doubt.**
- **Remove its reservation against Article 37 of the Convention.**

4. ARRESTS AND DETENTION

According to documentation by Fortify Rights, arrests for immigration-related offenses have more than tripled in the past two years (from a monthly average of 2,312 in 2023, to 3,815 in 2024 and 7,760 in 2025).¹² Credible reports indicate that children have been amongst those apprehended and detained, including babies and toddlers, as well as refugees in possession of UNHCR-issued cards.¹³ Observers even report that there have been cases of immigration officers entering refugee schools and alternative learning centres, “asking children whether they had UNHCR cards, taking children to police stations, and harassing and threatening teachers.”¹⁴

¹¹ International Detention Coalition et al, “Impact of Prolonged Immigration Detention on Rohingya Families and Communities in Malaysia,” May 2023, https://mixedmigration.org/wp-content/uploads/2023/05/277_Impact-of-detention.pdf

¹² Fortify Rights, “Malaysia: End Torture, Arbitrary Arrest and Detention of Refugees,” 18 June 2025, <https://www.fortifyrights.org/mly-inv-2025-06-18/>

¹³ The Star, “Almost 18,000 Illegals Held in Detention Centres So Far, Says Saifuddin,” 8 August 2025, <https://www.thestar.com.my/news/nation/2025/08/08/almost-18000-illegals-held-in-detention-centres-so-far-says-saifuddin>; Malay Mail, “Immigration Dept: 24 Babies, Children Among 58 Undocumented Migrants Nabbed in Miri,” 10 March 2024, <https://www.malaymail.com/news/malaysia/2024/03/10/immigration-dept-24-babies-children-among-58-undocumented-migrants-nabbed-in-miri/122591>

¹⁴ International Detention Coalition et al, “Impact of Prolonged Immigration Detention on Rohingya Families and Communities in Malaysia,” May 2023, https://mixedmigration.org/wp-content/uploads/2023/05/277_Impact-of-detention.pdf

Persons who are convicted serve their sentences in prison—following which they are transferred to an immigration detention centre, where removal and detention orders are issued by the Director General of Immigration (as per Sections 32, 34 and 24 of the Immigration Act). In 2025 a 16 year old was arrested in Banting and transferred to Kajang Prison, an adult detention facility. Despite being a minor, he was brought before the Banting Magistrate Court which sentenced him to three months' imprisonment and deportation to Myanmar given his undocumented status. However, this is not common practice, as children are typically immediately placed in immigration detention facilities with their parents. As of December 2025, the State Party operates 20 immigration detention facilities, known as “depots.”

Prior to August 2019, UNHCR was granted regular access to immigration detention facilities to conduct RSD and request the release of refugees and asylum seekers. However, in August 2019 Malaysian authorities suspended their regular access, and since then the refugee agency has been unable to restore the same level of access. As a group of NGOs noted in 2023, “the diminished access for UNHCR has led to significant increase in the numbers of refugees and people seeking asylum placed in protracted and indefinite detention.”¹⁵

In 2023, the Malaysian Home Minister (Saifuddin Nasution) said that children should not be detained in immigration depots.¹⁶ At the time, the government announced plans to remove children below the age of 10 from depots, and to place them in new dedicated centres where they can “receive more humane care, in a more conducive environment than the current settings.”¹⁷ Authorities launched the country's first ‘**Baitul Mahabbah**’ centre for children in September 2024, and as of December 2025 six are in operation—in Negeri Sembilan, Sabah, Sarawak, Kelantan, Johor, and Kedah.¹⁸

Although the Ministry of Home Affairs lauded the project, stating that it is “aligned with the Convention on the Rights of the Child, which stipulates the obligation of states to ensure that the best interests of the child are always protected,”¹⁹ observers argue that in reality these facilities essentially operate as detention centres in all but name. They highlight the fact that like the country's immigration depots, they operate under the authority of the Immigration Department with children supervised by immigration personnel rather than child-protection staff; children are deprived of their liberty; and there is no avenue for children to leave these facilities except through repatriation.²⁰

The Malaysian government does not publish disaggregated data on the numbers of children detained for immigration-related reasons. Nevertheless, figures disclosed through

¹⁵ International Detention Coalition et al, “Impact of Prolonged Immigration Detention on Rohingya Families and Communities in Malaysia,” May 2023, https://mixedmigration.org/wp-content/uploads/2023/05/277_Impact-of-detention.pdf

¹⁶ The Star, “Children Do Not Belong in Immigration Depots, Says Saifuddin,” 16 February 2023, <https://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-saifuddin>

¹⁷ Malaysiakini, “Govt Ready to Move Children from Immigration Depots Soon,” 22 August 2023, <https://www.malaysiakini.com/news/676561#friendshare-link-QVA1ChkpX-9cc0b8d50c81cdfb227743333b20917c-2a8b6402635c14d87c3469209250dbdbi10>

¹⁸ See: Berita, “Baitul Mahabbah perkukuh imej negara, jaga hak asasi kanak-kanak warga asing,” 10 November 2024, <https://berita.rtm.gov.my/nasional/senarai-berita-nasional/senarai-artikel/baitul-mahabbah-perkukuh-imej-negara-jaga-hak-asasi-kanak-kanak-warga-asing> and: Ministry of Home Affairs of Malaysia, “MOHA Bulletin 2025,” <https://cdnc.heyzine.com/files/uploaded/v3/fbb4ab2c4b2fe19803463bd436b6f38abe094229.pdf>

¹⁹ Ministry of Home Affairs of Malaysia, “MOHA Bulletin 2025,”

<https://cdnc.heyzine.com/files/uploaded/v3/fbb4ab2c4b2fe19803463bd436b6f38abe094229.pdf>

²⁰ Amnesty International, “Two Years of Baitul Mahabbah, Children Still Detained: EDN Calls for Real Alternatives,” 4 September 2025, <https://www.amnesty.my/2025/09/04/two-years-of-baitul-mahabbah/>

parliamentary questions and media reports indicate that the number of detained children remains alarmingly high. See Table 1 below. (It is unclear, however, if the figures include children in Baitul Mahabbah.)

Table 1: Number of Children in Immigration Detention on a Single Day

Date	Number of Detained Children
26 October 2020	756 (of whom 405 were unaccompanied) ²¹
29 January 2023	1,179 (656 boys and 523 girls) ²²
April 2023	1,030 ²³
September 2023	1,467 (832 boys and 635 girls) ²⁴
30 September 2024	2,092 ²⁵
6 July 2025	1,861 ²⁶

In light of the above information, we urge the Committee to issue the following recommendations:

- **Urge the State Party to immediately cease the detention of children for reasons related to their immigration status. Authorities must release all children—as well as other vulnerable individuals—from detention and cancel their removal orders. Instead, children should be referred to appropriate social assistance agencies or services.**
- **Encourage the State Party to systematically collect and publish disaggregated data—by age, sex, nationality, and grounds for—and length of—detention, on all children detained for immigration-related reasons.**

5. POOR DETENTION CONDITIONS AND REPORTS OF ABUSE

For years, observers have highlighted inhumane conditions inside Malaysia’s immigration detention facilities. Despite frequent recommendations from international rights mechanisms to ensure detention conditions are improved,²⁷ concerns remain, with detainees exposed to severe overcrowding, inadequate nutrition, limited health care, and poor sanitation and hygiene levels. Fortify Rights has also documented numerous testimonies in which former

²¹ Al Jazeera, “Lone Children Among Hundreds in Malaysia Immigration Detention,” 10 December 2020, <https://www.aljazeera.com/news/2020/12/10/lone-children-among-hundreds-in-malaysia-immigration-detention>

²² International Detention Coalition et al, “Impact of Prolonged Immigration Detention on Rohingya Families and Communities in Malaysia,” May 2023, https://mixedmigration.org/wp-content/uploads/2023/05/277_Impact-of-detention.pdf

²³ UN Human Rights Council, “Malaysia: Compilation of Information Prepared by the Office of the United Nations High Commissioner for Human Rights,” 13 November 2023, <https://docs.un.org/en/A/HRC/WG.6/45/MYS/2>

²⁴ Human Rights Watch, ““We Can’t See the Sun”: Malaysia’s Arbitrary Detention of Migrants and Refugees,” 5 March 2024, <https://www.hrw.org/report/2024/03/05/we-cant-see-sun/malysias-arbitrary-detention-migrants-and-refugees>

²⁵ Malay Mail, “Home Minister Says No Issue of Overcrowding at Immigration Depots, Rights Groups Get to Visit Detainees After Writing Ahead,” 6 December 2024, <https://www.malaymail.com/news/malaysia/2024/12/06/home-minister-says-no-issue-of-overcrowding-at-immigration-depots-rights-groups-get-to-visit-detainees-after-writing-ahead/159054>

²⁶ Amnesty International, “Two Years of Baitul Mahabbah, Children Still Detained: EDN Calls for Real Alternatives,” 4 September 2025, <https://www.amnesty.my/2025/09/04/two-years-of-baitul-mahabbah/>

²⁷ See: UN Committee on the Elimination of Violence against Women (CEDAW), “Concluding Observations on the Sixth Periodic Report of Malaysia,” 2024, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2FC%2FMYS%2FCO%2F6&Lang=en

detainees described their experiences of torture and abuse in detention, including verbal abuse during strip searches, the use of pipes to beat detainees' feet, and beatings.²⁸

The impacts of these conditions are severe. Studies have found that detainees commonly suffer from skin diseases, tuberculosis, diarrhoea, stomach ulcers, and fever.²⁹ Children are particularly at risk in such conditions, and face acute risk of detrimental and long-lasting impacts upon their development and physical and mental well-being.

Deaths, meanwhile, are frequently reported. Government data, cited by several media outlets, reveals that more than 300 undocumented migrants have died in custody in the country since 2020.³⁰ Children have featured among this count: seven children died in the country's detention facilities in 2022.³¹

UNCHR has often remarked that they have been denied entry into the Immigration Detention Centres to ensure the documentation and verification processes or to hand over UNCHR cards.³² At the same time however, the current Malaysian government has recently denied these allegations.³³ From a civil society perspective, we do not have objective evidence to verify either side's claims.

²⁸ Fortify Rights, "Malaysia: End Torture, Arbitrary Arrest and Detention of Refugees," 18 June 2025, <https://www.fortifyrights.org/mly-inv-2025-06-18/>

²⁹ Coalition of Sovereign Migrant Workers, "'A Report from Hell': Conditions of the Immigration Detention Centres in Sabah, Malaysia," 25 June 2022, https://drive.google.com/file/d/1Hg_culpQtDGmXcZ-NA0H5xA77nt4kFbw/view ; Human Rights Watch, "'We Can't See the Sun': Malaysia's Arbitrary Detention of Migrants and Refugees," 2024, https://www.hrw.org/sites/default/files/media_2024/03/malaysia0324web.pdf

³⁰ New York Times, "Where Hundreds of Undocumented Migrants Have Died in Custody," 29 November 2025, <https://www.nytimes.com/2025/11/29/world/asia/malaysia-migrant-detentions-deaths.html>

³¹ Al Jazeera, "Malaysia Pressed to Probe Deaths of 150 Foreigners in Detention," 23 February 2023, <https://www.aljazeera.com/news/2023/2/23/malaysia-pressed-to-probe-deaths-of-150-foreigners-in-detention>

³² Reuters, "Malaysia Denying UN Access to Detained Asylum Seekers, Agency Says," 11 November 2020, <https://www.reuters.com/world/asia-pacific/malaysia-denying-un-access-detained-asylum-seekers-agency-says-2020-11-11/>

³³ Bernama, "Malaysia Doesn't Deny UNHCR Access to Immigration Depots, Says Saifuddin," 11 December 2025, <https://www.freemalaysiatoday.com/category/nation/2025/12/11/malaysia-doesnt-deny-unhcr-access-to-immigration-depots-says-saifuddin>

6. RECOMMENDATIONS

6a. Urge Malaysia to stop all forms of immigration detention of children. This prohibition should extend to both de facto detention during ad hoc border procedures as well as during return procedures. As per the CRC's 2017 Joint General Comment with the CMW concerning the human rights of children in the context of international migration, family members or guardians of accompanied children must also be accommodated outside detention along with their children.

6b. Ensure that all child custodial centres meet international standards, ensuring that child migrants are guaranteed the right and ability to communicate with the outside world; information is provided in alternative languages to ensure understanding; material conditions guarantee access to security, health, food, and other rights; and detainees are able to access legal representatives.

6c. Immediately take steps to prevent violence and abuse of child migrants in custody. Ensure that all staff members at facilities accommodating child migrants are trained to respect detainees' rights and sensitised to their needs. Where individuals have committed abuses against detainees, perpetrators must be investigated and face criminal prosecution, and all necessary efforts must be made to allow victims access to mechanisms of justice and to prompt redress.

6d. Collect and make publicly available up to date data and statistics on all detention and other enforcement procedures that involve child migrants.

6e. Ensure that journalists, NGOs and independent human rights monitors are given full and free access to centres where children and families are detained for immigration reasons.

6.f. Phase out the use of all immigration detention centres, including Mahabbah, and move towards alternative solutions like foster homes within communities and managed by communities themselves, for both children and adults. SUHAKAM has made such studies in the past.

6.g. Decriminalise all immigration related offences and treat them as administrative offences which do not require arrest and detention and even whipping.

6.h. Remove all ouster clauses in the Immigration Act 155 especially Section 59.

6.i. Ensure an efficient and rights-based access to justice mechanisms, coupled with a legal aid framework which is sufficiently-funded and staffed, and accessible for all asylum seekers, refugees and migrants who are arrested and detained.

6.j. Compel the Malaysian government to make public all Standard Operating Procedures related to arrest and detention.

6.k. Amend section 334 of the Criminal Procedure Code, to include inquiries into the cause of deaths in custody at Immigration Detention Centres.