

INDONESIA

Indonesia is not a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, or to the International Covenant on Civil and Political Rights or its First and Second Optional Protocols. At the end of 2000, Indonesia hosted more than 120,000 refugees and asylum seekers, including an estimated 120,000 East Timorese and 373 asylum seekers awaiting UNHCR status determinations.¹ At the end of 2001, the number of hosted refugees and asylum seekers was approximately 81,000, including roughly 80,000 East Timorese and 806 asylum seekers awaiting UNHCR status determinations². It is estimated that there were some 4,000 Australia-bound asylum seekers in Indonesia during 2001.³ In the first six months of 2002, 774 people sought asylum.⁴ In August 2002, it was reported that no asylum seekers were then detained in immigration detention centers (“kalantinas”) and that the number of asylum seekers so detained previously had never been more than 10% of the entire asylum seeker population.⁵

Indonesia has no mechanism for granting asylum.⁶ While the 1999 Foreign Relations Act provides for the granting of asylum in accordance with national legislation, as of July 2002, no such relevant legislation exists. According to a 2002 report, the Indonesian government allows asylum seekers to stay in the country during UNHCR’s consideration of their asylum claims and typically detains asylum seekers only during the status

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 133, *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001]; U.N. High Commissioner for Refugees, *Statistics of Individual Cases in Indonesia as per December 31, 2000* (on file with Debevoise & Plimpton).

² U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 121-122, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002]; U.N. High Commissioner for Refugees, *Statistics of Individual Cases in Indonesia as per December 31, 2001* (on file with Debevoise & Plimpton).

³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 126.

⁴ U.N. High Commissioner for Refugees, *Statistics of Individual Cases in Indonesia as per June 30, 2002* (on file with Debevoise & Plimpton).

⁵ E-mail from Richard Danziger, International Organization for Migration, to Emily O’Connor, Debevoise & Plimpton (Aug. 8, 2002) (on file with Debevoise & Plimpton) [hereinafter IOM Correspondence].

⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 122.

determination procedure, if at all.⁷ Asylum seekers who arrive without valid travel documents may be detained by the Immigration Authority in ‘immigration quarantine’ provided for under the Immigration Act of 1992 (the “Act”).⁸

Since 2000, as a result of efforts by the Australian government, asylum seekers and unauthorized migrants generally have been dealt with under the “Regional Cooperation Arrangement”, a system involving the Indonesian authorities, including police and immigration officials at regional and central levels, the corresponding Australian authorities, UNHCR and the International Organization for Migration (“IOM”).⁹ Australia’s interest in fashioning such arrangements stems from the fact that Indonesia has been a major transit country for those seeking refuge in Australia.

Under the regional arrangements, many aspects of which are funded by Australia, unauthorized migrants who come to the attention of Indonesian authorities may be detained while IOM is notified. Criteria for detention include whether there is a karantina available where the migrant is discovered, and, if a family is involved, whether conditions in an available karantina would be suitable for women and children. In practice, detention is reported to be rare, and detained asylum seekers are typically able to come and go during the day from the karantinas.¹⁰ The U.S. Committee for Refugees notes in a 2002 report that, because of the limited number of detention spaces, unauthorized migrants often are housed in hotels or like accommodation and are “quite free”.¹¹ IOM staff travel to the migrants’ locations to undertake an initial assessment, and offer them the chance to contact UNHCR. IOM then notifies UNHCR’s Jakarta office of any migrants wishing to have status determination interviews.¹² On occasion, IOM will relocate an asylum seekers to Jakarta, but typically, asylum seekers remain in their initial placement prior to the UNHCR interview.¹³

⁷ E-mail from Sigit Riyanto, U.N. High Commissioner for Refugees, to Emily O’Connor, Debevoise & Plimpton (July 10, 2002) (on file with Debevoise & Plimpton) [hereinafter UNHCR Correspondence (July 10, 2002)].

⁸ E-mail from Sigit Riyanto, U.N. High Commissioner for Refugees, to Emily O’Connor, Debevoise & Plimpton (Aug. 1, 2002) (on file with Debevoise & Plimpton) [hereinafter UNHCR Correspondence (Aug. 1, 2002)]; UNHCR Correspondence (July 10, 2002), *supra* note 7.

⁹ U.S. Committee for Refugees, *Sea Change: Australia’s New Approach for Asylum Seekers*, at 14 (Feb. 2002) [hereinafter *Sea Change Report*] available at <http://www.refugees.org/pub/australia2.cfm> (last accessed Aug. 29, 2002).

¹⁰ IOM Correspondence, *supra* note 5.

¹¹ *Sea Change Report*, *supra* note 9, at 12, 14.

¹² *Id.* at 12.

¹³ *Id.* at 13.

Asylum seekers often wait weeks, or even months, for UNHCR staff to travel from Jakarta to conduct refugee status determinations, in part because of the small UNHCR staff and in part because of difficulty in finding interpreters for certain languages.¹⁴ Asylum seekers recognized as refugees are typically relocated to Jakarta, where they are transferred from IOM's to UNHCR's care until a 'durable solution' can be found. Such a solution is invariably resettlement in a third country.¹⁵ Those who have been detained awaiting status determination by UNHCR are released upon UNHCR's request if accorded refugee status.¹⁶

Though asylum seekers who have been denied refugee status by UNHCR are subject to deportation under Indonesian law, sources in 2002 state that there are no known cases of unauthorized migrants being deported by the government.¹⁷ In practice, rejected asylum seekers who have exhausted appeals are neither detained for deported.¹⁸ Critics have noted that return to country of origin for those found not to be refugees might constitute denial of the right to seek asylum.¹⁹

In addition, asylum seekers are subject to other provisions of the Act, which provide for detention and prosecution of aliens who enter Indonesia illegally or overstay their visas. It is reported, however, that such detention or prosecution is rarely, if ever, used.²⁰

Is there independent review of the detention decision? No.

Detained asylum seekers are kept without review until the immigration officials notify UNHCR of their presence and UNHCR makes its status determination.²¹ As noted above, those who have been detained awaiting status determination by UNHCR are released upon UNHCR's request if accorded refugee status.²²

Are there limits on the period of detention? No.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ UNHCR Correspondence (July 10, 2002), *supra* note 7.

¹⁷ Sea Change Report, *supra* note 9, at 14; IOM Correspondence, *supra* note 5.

¹⁸ IOM Correspondence, *supra* note 5.

¹⁹ Tim Morris, *Australia and Asylum: No Longer "Land of the Fair Go"?*, Forced Migration Review, August 8, 2000, at 1.

²⁰ IOM Correspondence, *supra* note 5.

²¹ UNHCR Correspondence (Aug. 1, 2002), *supra* note 8.

²² UNHCR Correspondence (July 10, 2002), *supra* note 7.

It may take weeks or months for UNHCR to issue a refugee status determination.²³

Is there periodic review of detention? No.²⁴

Is there access to government-funded legal aid? No.

There is no national legislation concerning asylum seekers and detained asylum seekers have no access to government-funded legal aid.²⁵

Vulnerable groups: Children and the elderly are detained without distinction, though IOM's requests that particular vulnerable asylum seekers be moved out of detention have routinely been granted.²⁶

²³ Sea Change Report, *supra* note 9 at 13.

²⁴ UNHCR Correspondence (Aug. 1, 2002), *supra* note 8.

²⁵ *Id.*

²⁶ *Id.*; IOM Correspondence, *supra* note 5.