

MALAYSIA

Malaysia 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 or Second Optional Protocols. Malaysia has no legal framework for adjudicating asylum claims.¹ At the end of 2001, Malaysia was host to over 57,500 refugees and asylum seekers; 256 asylum applications were pending with UNHCR at the end of the year.²

All undocumented immigrants detected at or within the borders of Malaysia are subject to detention, including asylum seekers. Police have the power to arrest without warrant immigrants who cannot immediately produce, upon interrogation, documents that show legal entry. Although the 1959/1963 Immigration Act makes no mention of and provides no exception to asylum seekers or refugees, it gives the Minister power to exempt any person or class of persons from criminal charges and penalty for illegal entry.³ In practice, however, persons seeking asylum are treated as illegal immigrants and may be arrested, detained and deported.⁴ Section 56(2) of the Immigration Act explicitly states that a person is subject to deportation, regardless of whether proceedings are taken against him in respect of the offense, if he has unlawfully entered, reentered or remained in Malaysia.⁵

Some Rohingya asylum seekers interviewed by Human Rights Watch were detained for several months without charge or knowledge of their rights, then sentenced for illegal entry and after serving this sentence, deported to the Thai border where they were at risk being detained and deported to Burma.⁶ Others spent over a year in detention before being sent to the border.⁷

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 139, *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

² U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 127, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002] (this 57,500 figure consists almost entirely of Filipino Muslims in Sabah who fled to Malaysia in the 1970-80's).

³ 1953/1969 Immigration Act (Act 155), § 55; Human Rights Watch, *Living in Limbo: Burmese Rohingyas in Malaysia* 29 (2000) [hereinafter *Living in Limbo*].

⁴ *Living in Limbo*, *supra* note 3, at 28-29.

⁵ 1953/1969 Immigration Act (Act 155), § 56(2).

⁶ *Living in Limbo*, *supra* note 3, at 30, 44; E-mail from Zama Coursen-Neff, Human Rights Watch, to Min Jung Lee, Debevoise & Plimpton (Nov. 2, 2001) (on file with Debevoise & Plimpton) [hereinafter Human Rights Watch Correspondence (Nov. 2,

Malaysia's immigration detention camps are closed to all NGOs. In August 2001, the government increased limitations on UNHCR's already-limited access to asylum seekers and refugees in detention. Under this policy, UNCHR must obtain permission from the Ministry of Foreign Affairs to visit persons in detention.⁸ In addition, given Malaysia's accelerated efforts to deport illegal immigrants, the periods of detention before deportation are shorter, further restricting UNHCR's ability to intercede on behalf of asylum seekers.⁹ Although UNHCR staff are allowed limited access to particular visiting areas so that they may interview certain detainees, they are denied general access to the facilities. Whom they may interview is also restricted. However, former detainees interviewed by Human Rights Watch have reported horrid conditions, including routine beatings, sometimes to the point of death, and sexual abuse of both women and men.¹⁰

Is there independent review of detention decision? Yes, but not effective.

Though the Immigration Act provides for judicial review of detention, generally within 14 days of detention, this provision is reported to be widely ignored.¹¹

Is there a limit on period of detention? No limit after order of removal.

Non-citizens may be detained for 30 days pending a decision for removal.¹² Within 14 days of their arrest or detention, non-citizens are brought before a magistrate. Review is made and detention may be extended to allow for investigation of the charges. Violations of the Act, including illegal entry, may carry large fines, physical punishments such as caning, and a maximum sentence of five years. Those detained after receiving an

2001)]. Non-Rohingya asylum seekers and refugees are at risk of being deported to their country of origin. Although UNHCR sometimes grants them refugee status and resettles them, they may still be arrested and deported before resettlement. Malaysia only deports to countries it has agreements with. E-mail from Zama Coursen-Neff, Human Rights Watch, to Min Jung Lee, Debevoise & Plimpton (Feb. 13, 2002) (on file with Debevoise & Plimpton) [hereinafter Human Rights Watch Correspondence (Feb. 13, 2002)].

⁷ *Living in Limbo*, *supra* note 3, at 44.

⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 128.

⁹ *Id.* at 129.

¹⁰ *Living in Limbo*, *supra* note 3, at 33-41.

¹¹ *Id.* at 29.

¹² 1953/1969 Immigration Act (Act 155), § 35.

order of removal may be detained for such period as may be necessary for arranging removal.¹³

Is there periodic review of detention? No.

Though the Immigration Act provides for judicial supervision of detention, in practice this is widely ignored and detainees are left for prolonged periods of time without any meaningful review.¹⁴

Is there free access to government-funded legal aid? Limited.

Although some refugees who are actually prosecuted under the Act have been provided with government-funded attorneys during court proceedings, most detainees are not prosecuted and are therefore not provided with an attorney prior to removal.¹⁵ Even among those that have been prosecuted under the Act and provided with attorneys, however, Human Rights Watch has reported at least one case where the refugee was detained for three months, then deported.¹⁶

Vulnerable groups: According to Human Rights Watch, undocumented children are detained with unrelated adults and sometimes deported without their parents.¹⁷

¹³ *Id.* § 34(1).

¹⁴ *Living in Limbo*, *supra* note 3, at 30.

¹⁵ Human Rights Watch Correspondence (Nov. 2, 2001), *supra* note 6.

¹⁶ *Living in Limbo*, *supra* note 3, at 30.

¹⁷ *Id.* at 41-42.