

Malaysia Immigration Detention Profile

Profile Updated: July 2015

One of the more vibrant economies of southeast Asia, Malaysia is a magnet for migrants and asylum seekers despite its poor human rights record and failure to ratify key human rights treaties. All unauthorized foreigners, including Rohingyas fleeing Myanmar, are considered “illegal” or “prohibited” immigrants under the Immigration Act.[1] Immigration detention in Malaysia includes various unique and brutal features such as caning and detention aboard vessels.

Illegal entry and stay in Malaysia is criminalized and migrants often serve time in prisons before being transferred to one of the twelve administrative “immigration depots” while awaiting deportation.[2] Caning, a legacy of British colonial rule, remains a judicial punishment for criminal offences in the Malaysian Criminal Procedure Code. It was introduced in the Immigration Act in 2002 to deter unlawful migration. According to the Home Minister, 8,481 prisoners were caned in 2013, of whom 5,968 were non-citizens.[3] Denounced as a form of torture by Amnesty International[4] and as “*anachronistic and inconsistent with a compassionate society in a developed nation*” by the national Bar Association,[5] it is applied to adult males between 18 and 50 years old and leaves permanent physical and mental scars.

Some 68,000 people were placed in immigration detention in 2013 according to the local press[6] including mainly Burmese, Indonesians, and Bangladeshis. The national human rights institution, SUHAKAM, reported that 1,406 children were detained in detention centres (immigration depots) from January to October 2013.[7] Section 34(1) of the Immigration Act provides that persons may be detained for “such period as may be necessary” pending removal. Immigration detainees generally spend between two months and two years in detention.[8]

Procedural standards are reportedly very poor. Immigration detainees are rarely informed of the reasons for detention in a language they understand and they have scant access to legal counsel. There are no alternatives to immigration detention. Some UNHCR refugee cardholders detained in immigration depots can be released subject to the government’s discretion but the UN refugee agency only has access to them after they are transferred to the depots from prisons where they first serve immigration related sentences.

The Malaysian Passport Act empowers immigration and police officers to “lawfully detain” persons unlawfully entering Malaysia on board vessels during the period that the vessel is within Malaysia or the territorial waters thereof.[9] However, no information about the frequency of the application of this measure appears to be available.

Endnotes

[1] Act 155, Immigration Act 1959/63. Amended up to 1 January 2006. Section 55E (7). <http://www.agc.gov.my/Akta/Vol.%204/Act%20155.pdf>.

[2] Act 155, Immigration Act 1959/63. Amended up to 1 January 2006. Sections 6(3), 15(4) and 36. <http://www.agc.gov.my/Akta/Vol.%204/Act%20155.pdf>.

[3] Yuen Meikeng. Zahid: Over 8,000 prisoners caned last year. The Star online. 12 November 2014. <http://www.thestar.com.my/News/Nation/2014/11/12/Zahid-Parliament-prison....>

[4] Amnesty International, A Blow to Humanity: Torture by Judicial Caning in Malaysia, December 2010. <https://www.amnesty.org/en/documents/ASA28/013/2010/en/>.

[5] Anil Netto. MALAYSIA: Illegal Migrant Workers May Escape the Cane. Inter Press Service. 20 March 2007. <http://www.ipsnews.net/2007/03/malaysia-illegal-migrant-workers-may-esca...>

[6] Gho Chee Yuan. Government spends RM2m a day to feed illegal immigrants, says deputy minister. The Star Online. 6 January 2014. <http://www.themalaymailonline.com/malaysia/article/government-spends-rm2...>

[7] Human Rights Commission of Malaysia. Roundtable on Alternatives to Immigration Detention Held on 12th November 2013. <http://www.suhakam.org.my/wp-content/uploads/2013/12/Report-on-Roundtable-on-ATD-Malaysia.pdf>.

[8] Report of the Working Group on Arbitrary Detention: Addendum: Mission to Malaysia. A/HRC/16/47/Add.2. 8 February 2011.

[9] Act 150, Passport Act 1966. Incorporating all amendments up to 1 January 2006. Section 5(3). <http://www.agc.gov.my/Akta/Vol.%204/Act%20150.pdf>.