

SOUTHEAST ASIA

Amending the Malaysian Immigration Law: The Rohingya Refugees in Malaysia

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By Harsh Mahaseth



photo: © UNHCR/Vincent Tremreau

Denied citizenship in Myanmar, the Rohingya refugees fled to various counties including Malaysia. However, the Rohingyas in Malaysia have been challenged by the Malaysian legal system and also the fact that Malaysia is not a signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. So far, Malaysia does not have any formal legislative or regulatory mechanism to protect asylum-seekers and refugees. Due to this, the refugees in Malaysia are labelled as "illegal immigrants" which puts them at risk of refoulement. The Rohingyas in Malaysia have been subjected to harassment, extortion, imprisonment, and even deportation. One such instance was of forty Rohingya men who were imprisoned during the pandemic for entering Malaysia without a valid permit.

There are certain inconsistencies in the Malaysian legal system in meeting the standards set in international law for the treatment of refugees. Malaysia's Federal Constitution, which provides the main provisions relating to non-discrimination and equality is inadequate as a non-citizen's right to equality is protected but not their right to non-discrimination. A differentiation between rights available to citizens and non-citizens that are inherent within the Constitution negatively impacts the rights of non-citizens. Malaysia's lack of proper domestic legislation for the protection of refugees is another inconsistency within the legal system of the country. Malaysia's immigration law deals with the treatment of refugees. This law does not have principles of international law embedded within it. An example of the same is the principle of non-refoulement. This principle guarantees that no one should be returned to a nation where they might face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. Within domestic law protecting refugees could enhance the domestic laws to a substantial level. Section 6 of the Immigration Act 18959/63 (Act 155) iterates that a person shall not enter Malaysia without a valid permit, and Section 6(3) reiterates that whoever contravenes subsection 1 shall be guilty of an offence and receive due punishment including being liable to whipping of not more than six strokes. In this regard, caning as a punishment imposed on refugees, albeit the factor that only adult males under the age of fifty-five are subjected to caning, would amount to torture, and would also violate human rights. Apart from this, a vast amount of powers are conferred on authorities under the Immigration Act, which could lead to arbitrary actions, and since there is also a lack of opportunity to review or challenge the decisions of the court regarding the status of refugees, this must be addressed. Despite having relief to gain restitution via employment tribunals and civil law lawsuits, there are several impediments to accessing justice along with financial hardships that make it difficult to utilize.

Given the limited protections in Malaysia, in my research I have proposed the following legislative amendments:

-The Malaysian Government should consider granting refugees basic rights and not penalising them under the Immigration Act. Punishments such as caning should not be given to the refugees. Since revisions were made to the Immigration Act in 2002, a total of 47,914 migrants have been subjected to caning for immigration violations.

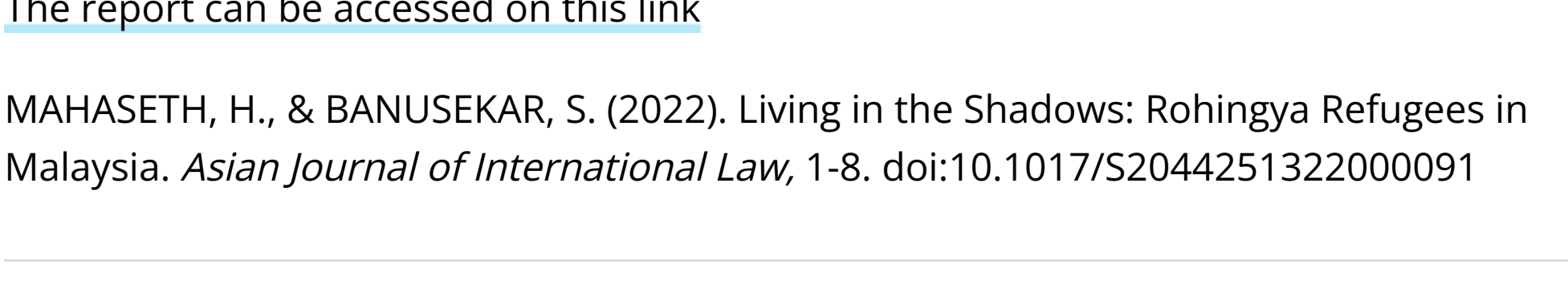
-The Malaysian Government should ensure the protection of women and children refugees through protective measures against sexual abuse and violence. Such a concern has been seen in detention centres. As Malaysia is a part of the United Nations Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women, it needs to provide certain protective provisions. For women and children, alternatives for detention must also be provided under the Immigration Act. Detention should not be seen as the first practice, but rather as the last resort. Detention has an impact on the health and psychological well-being and alternatives such as placement with host families, bail schemes, and support from guarantors or sponsors should be looked into. Even if detention remains the practice, the period of time should be shortened, and there should be a right to appeal.

-Ratifying the Refugee Convention and the accompanying Protocol, or passing a law that governs refugee issues would contribute to the betterment of Rohingya refugees in Malaysia.

In conclusion, while the Malaysian government has experimented with a variety of policy approaches, more coherence and protection are needed. The Government should consider these amendments and work toward a successful approach to protect the Rohingya refugees which could also lead to the betterment of society in Malaysia.

The report can be accessed on this link

MAHASETH, H., & BANUSEKAR, S. (2022). Living in the Shadows: Rohingya Refugees in Malaysia. *Asian Journal of International Law*, 1-8. doi:10.1017/S2044251322000091



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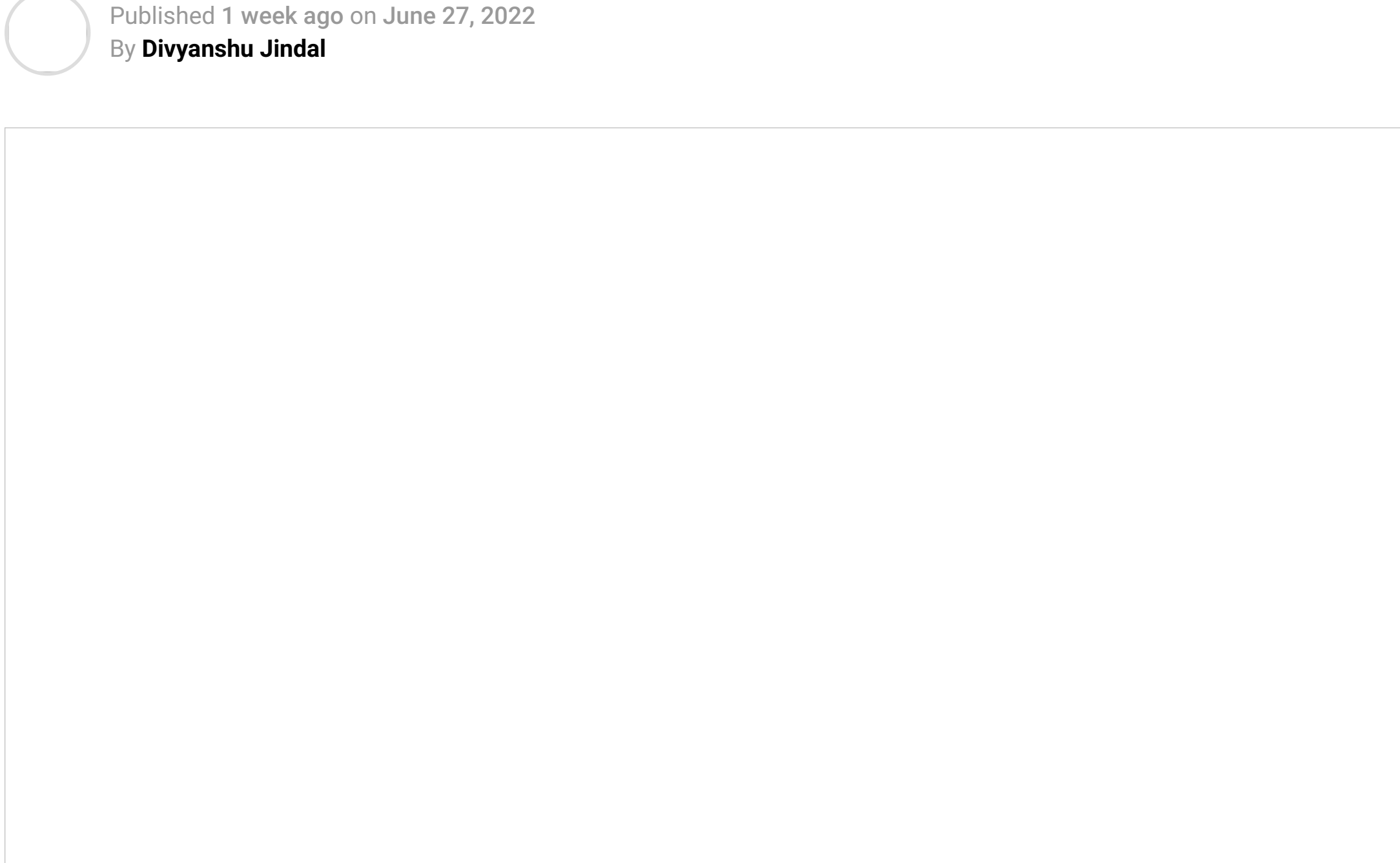
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Expanding the India-ASEAN Cyber Frontiers

Published 1 week ago on June 27, 2022
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The recently concluded India-ASEAN Foreign Minister's Dialogue (also known as the 'Delhi Dialogue') celebrated thirty years of the India-ASEAN relationship. The current year, designated as the ASEAN-India Friendship Year, highlights the significance of strengthening the partnership in an increasingly dynamic regional and geopolitical landscape. For India, ASEAN stands at the core of its vision for the Indo-Pacific, as well as for its Act East Policy. For the ASEAN, India presents the solution for solidifying strategic autonomy as the great power competition between the US and China unfolds in the region.

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Khieu Samphan (left) and Nuon Chea in the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC). File photo. Photo: ECCC

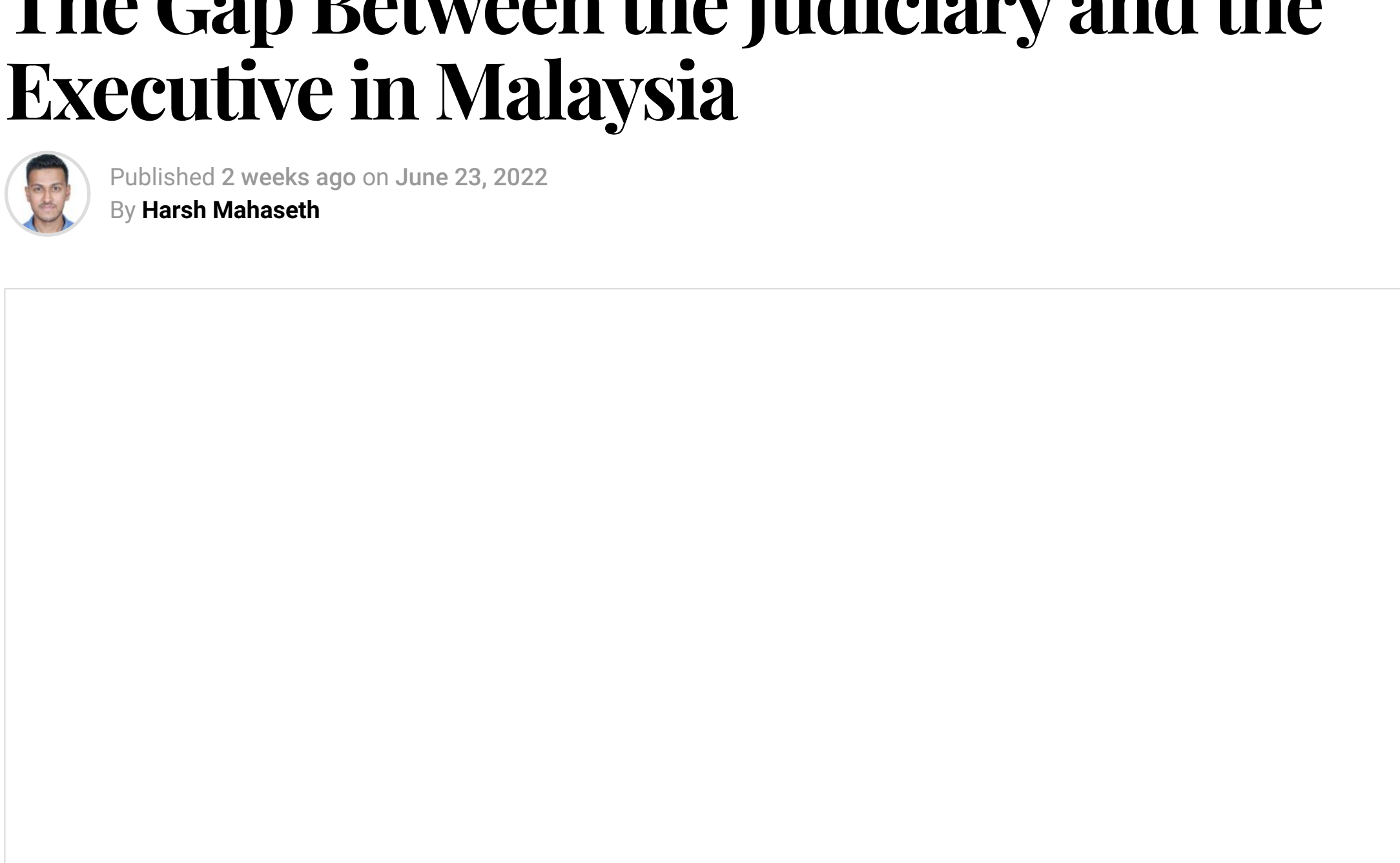
Right from the time of Ho Chi Minh, Vietnam has adopted a liberal socialist welfare state emulating the erstwhile USSR. Within the historical narrative related to Indochina region the atrocities committed by Khmer Rouge has been listed as one of the darkest periods of history in Cambodia. Khmer Rouge after coming to power were suspicious of Vietnamese intentions and has developed an antagonistic attitude towards Vietnam. There have been skirmishes between the armed forces of the two countries and Khmer Rouge was strongly supported by China at that time. The establishment of People's Republic of Kampuchea after the defeat of Pol Pot which was a replacement for the authoritarian Pol Pot regime. Led to the re institution of the state institutions and the

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The Gap Between the Judiciary and the Executive in Malaysia

Published 2 weeks ago on June 23, 2022
By Harsh Mahaseth



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Malaysia's political reality is that the Executive is headed by a Cabinet of Ministers made up entirely of members of the ruling party, which can muster enough votes in Parliament to change the Constitution and enact any legislation. The logical conclusion is that the Legislature and the Executive assist each other in achieving similar goals and policies. The Judiciary is the weakest governing institution due to the sum total of their constitutional powers. As a result, it is argued that all legislative and executive actions affecting the judiciary must be treated with caution.[1]

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