

SUBMISSION BY
COALITION MEMBERS OF THE MIGRATION WORKING GROUP (MWG)
FOR THE 31ST SESSION IN THE 3RD CYCLE OF THE HRC'S
UNIVERSAL PERIODIC REVIEW
ON THE STATUS OF MIGRANT WORKERS, DOMESTIC WORKERS,
ASYLUM SEEKERS, REFUGEES, TRAFFICKED VICTIMS AND FOREIGN
SPOUSES OF MALAYSIAN CITIZENS, IN MALAYSIA

Background

1. MWGs wish to draw attention to the human rights violations and discrimination faced by non-citizens in Malaysia, in particular migrant workers, domestic workers, asylum seekers, refugees, trafficked victims and foreign spouses of Malaysian citizens.
2. MWG adopts and refers to the joint submission by Asylum Access Malaysia (AAM) and the Asia Pacific Refugee Rights Network (APRRN) for consideration in Malaysia's third Universal Periodic Review (UPR) in relation to the rights of asylum seekers and refugees.
3. MWG adopts and refers to the submission by Foreign Spouses Support Group stakeholder report on Malaysia for the 31st session in the 3rd cycle of the HRC's Universal Periodic Review in 2018 in relation to the rights of foreign spouses of Malaysian citizens.
4. As at 30 June 2017, officials estimate that there are 1,781,598 documented migrant workers in Malaysia. However industry players have put the figures at three million with half the numbers with irregular status, some of whom entered Malaysia legally but became undocumented for various reasons. Of these, there are an estimated 250,000 authorised foreign domestic workers and around 100,000 foreign domestic workers with irregular status.

Equality and non-discrimination

3. We commend the government's move in introducing the minimum monthly wage in 2012 which was extended to authorised migrant workers in Dec 2013 and increased in Dec 2016 to RM1000 in Peninsular Malaysia and RM920 in Sabah, Sarawak and the federal territory of Labuan. Domestic workers are specifically excluded from the minimum wage.
4. However in introducing the minimum wage in 2012, the government shifted the paying of levy (a form of tax) from the employer to the migrant worker and allowed employers to additionally deduct RM50 monthly for providing accommodation. The levy was raised significantly within a range of RM50 –

RM600 in March 2015. In Jan 2018, in a bid to cap the hiring of migrant workers to 15% of the labour force by 2020, the government announced its decision to shift the levy back to the employer with the employer having to sign as stipulated in the Employers Undertaking document signed by employers prior to hiring migrant workers.¹ Civil society and trade unions have voiced concerns that employers, especially those from small and medium enterprises, were deducting workers' salaries to recoup the levy cost.

Right to life, liberty and security of the person

5. Malaysia attempts to reduce the number of irregular migrants in its territory by introducing programmes to legalise undocumented workers as well as conduct large-scale 'crackdowns' aimed at arresting, punishing, and deporting irregular migrants.
6. In 2011, the government launched a regularisation programme called '6P' where employers were given a time-frame of three weeks to register undocumented migrant workers and obtain a valid work permit for two or three years depending on the industry. About 1.3 million undocumented workers were registered and, of these, 521,734 were granted temporary permits and 303,000 were voluntarily repatriated. Towards the end of the programme in 2014, the government gave a one year extension. In Feb 2016, the government again reopened regularisation programme purportedly to fill labour shortages in certain industries while restricting the recruitment of new migrant workers. However, these numbers do not reflect the total number of migrant workers, asylum seekers, refugees, and stateless persons in Malaysia, either because they did not come forward to register themselves or they were not included under the biometric registration system as they were refugees.
7. While it was announced that the 6P registration could be done directly at the immigration offices around the country, the registration was undertaken largely by private companies contracted to the Ministry of Home Affairs. NGOs have received a large number of complaints from non-citizens and employers who paid the fees required for regularisation and never obtained their documents. Despite filing cases with the Police, the Immigration Department and the Home Ministry to hold such agents accountable, no actions have been taken. Meanwhile the non-citizens involved remain undocumented. They are still being denied the right to work and the right to redress.
8. Since 1992, the government has continued to carry out immigration raids and large-scale operations to identify and deport undocumented workers. Between 1992 and 2002, 2.25 million undocumented migrants were deported from Malaysia through these operations. Between 2007 and 2009, 154,729 undocumented workers were deported. In January 2014, the government reported that under the 6P, 6,150 people had been arrested and 1,500 found to be undocumented and deported while 108 employers were detained.² However,

¹ <https://www.nst.com.my/news/nation/2017/12/316614/employers-pay-levy-foreign-workers-jan-1-2018>

² <http://www.humanresourcesonline.net/108-employers-5065-illegal-foreign-workers-detained-in-malaysia-since-july/>

government legal aid does not exist for foreign nationals and private legal representation is barely available for detained non-nationals and the precise numbers of deported undocumented workers or if any employers were convicted are not known.

9. Non-citizens with irregular status are punished harshly, including with whipping (or caning), which constitutes torture. Under the Immigration Act 1959/63, any person entering the country without valid documents is guilty of an immigration offence, punishable by a fine not exceeding 10,000 Malaysian Ringgit and/or imprisonment of up to five years, and shall also be liable to whipping of not more than six strokes (Section 6(3)). In June 2009, the government revealed that it had sentenced 47,914 migrants to be caned for immigration offences since this method of punishment was introduced in 2002, and that 34,923 migrants had been caned between 2002 and 2008.³ The European Parliament has denounced Malaysia's practice of caning, recognizing it as "a practice that amounts to torture and is clearly illegal under international law". These individuals are held in detention depots indefinitely while awaiting deportation to their countries of origin.⁴
10. Arrangements for deportations are often lengthy, and result in the indefinite detention of an individual. While Section 35 of the Immigration Act 1959/63 allows for a person to be detained for a period "not exceeding thirty days pending a decision as to whether an order for his removal should be made", in practice, non-citizens spend much longer periods of time awaiting removal. As the UN Working Group on Arbitrary Detention observes: "Once detainees have served their prison sentences for their illegal presence on Malaysian territory, they are held in detention centres for an indefinite period while awaiting deportation to their countries of origin."⁵
11. The government continues to detain vulnerable groups of non-citizens in immigration detention depots, such as children (including unaccompanied minors), pregnant and lactating women, the elderly, and individuals with mental illness and with disabilities. We are also concerned about the detention of persons with disabilities and persons with mental and physical illnesses. We have come across cases where such individuals were not provided with the specialized care and treatment they desperately needed.
12. Although the Immigration (Administration and Management of Immigration Depots) Regulations 2003 provide that a child under the age of 12 may remain with any of his/her parents (Regulation 11), there are no provisions for the protection of unaccompanied children and adolescents.⁶ In practice, the conditions under which children are detained vary. In some depots,

³ US Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Country Reports on Human Rights Practices Report: Malaysia, April 8, 2011, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154391.htm>, accessed on 25 January 2012

⁴ P7_TA-PROV(2010)049, Malaysia: the practice of caning, European Parliament resolution of 16 December 2010 on Malaysia: the practice of caning, accessed 25 January 2012.

⁵ General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2, para 43.

⁶ FIDH and SUARAM (2008), *supra fn.11*, p. 16

unaccompanied minors are kept with female adult detainees, while in others they are kept separate from adults. Children in immigration detention don't have access to education. There are also no procedures in place for determining the best interests of the child. In its 2007 Concluding Observations on Malaysia, the UN Committee on the Rights of the Child recommended that Malaysia take urgent measures not to detain children in connection with immigration proceedings, unless necessary to protect their best interests, and then for the shortest time possible.⁷

13. Non-citizens arrested for criminal offences are held for investigation for 14 days before being brought to court, unlike citizens, who must be brought to court within 24 hours.⁸ After they are charged with a criminal offence, bail is denied as a rule as a result of flight risks. As those who claim trial inevitably face months of delay to the conclusion of their cases (on account of delays in accessing legal representation; delays in the court obtaining interpreters; and delays caused by the prosecution), the majority of non-citizens plead guilty in order to expedite their release from detention.
14. We are concerned about the poor accountability of the government in relation to deaths in detention. The National Human Rights Commission (SUHAKAM) in its 2016 annual report reported that 118 foreign national, including undocumented workers, refugees and asylum seekers, had died at detention centres in the last two years and more than half these numbers were from Myanmar.⁹ In 2015, UNHCR reported that 24 'persons of concern' to UNHCR died in immigration centres.¹⁰ SUHAKAM and UNHCR reported that most of the deaths were due to diseases because of the overcrowding, unhygienic and unsanitary conditions of the detention facilities as lack of proper healthcare. The UN Working Group on Arbitrary Detention has expressed concern over Malaysia's regime of mandatory administrative detention. They note that conditions in immigration detention depots are poor, with overcrowding, insufficient access to water, poor sanitation, and inadequate medical care, as well as cases of deaths in detention.¹¹
15. We commend the government efforts in combating human trafficking in the country. In 2017, Malaysia recorded 147 convictions of human trafficking cases and 100 in 2016.¹² Malaysia also amended the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 in 2015 to allow for a victim of trafficking

⁷ Committee on the Rights of the Child, Concluding Observations: Malaysia, UN Doc. CRC/C/MYS/CO/1, 25 June 2007, Para 83

⁸ Article 5(4) of the Federal Constitution allows for a non-citizen "arrested or detained under the law relating to immigration" (our emphasis) to be held in remand for up to fourteen days before he/she is to be produced before a magistrate. A citizen, however, must be produced before a magistrate within 24 hours.

⁹ <https://www.reuters.com/article/us-malaysia-detention-deaths/malaysia-rights-panel-disturbed-over-more-than-600-deaths-in-prisons-and-detention-centers-idUSKBN1760S3>

¹⁰ <https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals>

¹¹ General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2, para 81.

¹² <https://www.nst.com.my/news/crime-courts/2018/01/326846/higher-convictions-147-human-trafficking-cases-last-year>

to be paid a monthly incentive during his/her stay at the shelters as well as provisions for the court to award compensate to the victim by the perpetrator regardless of whether a conviction is secured.¹³ As at March 2018, 150 human trafficking victims had received their monthly incentives but there has not been any compensation paid out to victims.¹⁴

16. We commend the enactment of the (Permission to move freely and to work)(Foreign National) Regulations 2016 to allow victims of trafficking who are assessed to be fit for employment in terms of psychology and security. As at March 2018, 95 victims were granted permission to move freely and work in Malaysia.¹⁵
17. The government's efforts in setting up a special session court on 28 Mar 2018 to tackle human trafficking cases is welcomed.¹⁶
18. The government also funds two NGOs to house and provide psychosocial support including accompanying the victim at trials. As the case is tried as a criminal offence, the deputy public prosecutors prosecute the case and the perpetrators are represented by defence lawyers whereas the victim and the victims' family are not legally represented in court. We are concerned that most victims languish in shelters for the lengthy duration of their case and are not privy to the progress of the case which deters victims from assisting in the case.¹⁷
19. As the government neither registers nor conducts refugee status determination for refugees, UNHCR conducts these activities, issuing refugee cards to those it formally recognises as refugees.
20. We welcome the new security enhanced UNHCR refugee-status card issued in June 2017 to enable Immigration officials and the police to validate and better recognise the UNHCR issued card.¹⁸ However we are concerned over the continuous arrests and prolonged detention of refugees until UNHCR is able to secure their release. We are also concerned about the protection of refugees who have not been formally recognised as refugees by UNHCR, which number into the thousands. They, and asylum seekers awaiting refugee-status determination decisions, are vulnerable to arrest, detention, punishment for immigration offences, and deportation, which may result in refoulement. UNHCR does not have the capacity to intervene in such cases, and these individuals are punished as irregular migrants.

¹³ <https://www.loc.gov/law/help/human-trafficking/malaysia.php>

¹⁴ <https://www.nst.com.my/news/crime-courts/2018/01/326846/higher-convictions-147-human-trafficking-cases-last-year>

¹⁵ <https://www.nst.com.my/news/crime-courts/2018/01/326846/higher-convictions-147-human-trafficking-cases-last-year>

¹⁶ <https://www.themalaysianinsight.com/s/45497/>

¹⁷ <https://www.thestar.com.my/news/nation/2013/10/20/a-long-and-winding-road/>

¹⁸ The UNHCR Card Verification Service (CVS) is an efficient and secure way for Malaysian law enforcers and other authorised personnel to validate documents issued by UNHCR to refugees and asylum-seekers in Malaysia. With this service, you can check the ID of a person carrying a UNHCR document to determine if the document is genuine. (<https://verification.unhcr.org.my/>)

21. In April 2017, the government rolled out a Tracking Refugees Information System (TRIS) a government-sanctioned programme to vet all refugees currently residing in Malaysia and issue them with a special identity card ‘MyRC’ which is certified by the government, in an attempt to address transnational crimes, terrorist activities and human trafficking activities. As at Aug 2017, only 300 of the 150,000 refugees have registered in this system and the government has alleged that the numbers are dismal due to the non-cooperation of UNHCR in reaching out to the communities.¹⁹ While the government has given assurance that the system was to capture who was in the country, it does not guarantee on how personal data of the refugee are kept confidential. Further the card does not come with any employment or other rights attached to it making it less attractive to refugees.
22. We are seriously concerned about breaches in the observation of the principle of *non-refoulement*. On 12 February 2012, the Malaysian government deported the journalist Hamza Kashgari to Saudi Arabia, where he risked being sentenced to death on charges of apostasy after he tweeted about the prophet Mohammed.²⁰ On 31 December 2012, the Malaysian government deported six Uighurs with pending asylum claims to China.²¹ In Feb 2018, the Malaysian government was reported proceeding with the deportation of 11 Uighurs to China²² despite protests from NGOs in Malaysia as well as the US government.²³
23. In Jan 2015, a raid on 28 human trafficking camps in Wang Kelian, Perlis (north of Malaysia) led to the discovery of 139 mass graves which was made public in May 2015.²⁴ Similar camps were found on the Thai side of the border. More than 150 remains of foreign nationals were exhumed from shallow graves. SUHAKAM has been hampered to conduct a public inquiry due to reluctance of the victims who survived the camps to come forward as well as authorities not sharing information on the camps.²⁵ The camps have since been razed and any incriminating evidence lost. Exclusive coverage from mainstream media, New Straits Times had shed light on involvement of Malaysians including those in authority, in operation of these camps.²⁶ The government had initially arrested 12 police who suspected to be involved in the activities of the camps but were then released due to lack of evidence.²⁷ As of to date, only four foreign nationals have been charged for their involvement in the camps²⁸ as opposed to Thailand who

¹⁹ <https://www.thestar.com.my/news/nation/2017/08/03/Only-300-refugees-registered-so-far-ministry-may-have-to-track-down-the-150000-unhcr-cardholders/>

²⁰ Article 19 (2012) *Saudi Arabia and Malaysia violate rights of Saudi tweeter*, 22 February, available at: <http://www.unhcr.org/refworld/docid/4f4b66d02.html>, accessed 6 March 2013.

²¹ Human Rights Watch (2013) *Malaysia: Stop Forced Returns to China*, available at: <http://www.hrw.org/news/2013/02/03/malaysia-stop-forced-returns-china>, accessed 6 March 2013.

²² <https://www.thestar.com.my/news/nation/2018/02/11/uighurs-will-be-sent-back-zahid-malaysia-will-return-them-to-china-after-police-investigation/>

²³ <https://www.reuters.com/article/us-malaysia-uighurs/u-s-voices-concern-over-11-uighur-china-wants-malaysia-to-deport-idUSKBN1FT0GK>

²⁴ <http://says.com/my/news/nst-s-wang-kelian-expose>

²⁵ <http://www.freemalaysiatoday.com/category/nation/2017/12/22/suhakam-says-cops-kdn-of-no-help-in-wang-kelian-mass-graves-probe/>

²⁶ <https://www.nst.com.my/news/exclusive/2017/12/316339/exclusive-secrets-wang-kelian-exposed>

²⁷ <http://www.themalaymailonline.com/malaysia/article/dpm-12-cops-nabbed-over-wang-kelian-trafficking-let-go>

²⁸ <http://www.thesundaily.my/news/1794896>

arrested 62 person including an army general, two politicians, and police officers.²⁹

24. We are concerned about the rights violations experienced by women domestic workers; their vulnerability to exploitation and forced labour; as well as the government's inattention to the protection of their rights. In 2015, Tenaganita recorded 16 child labour cases, 13 missing domestic workers and 25 sexual abuse and 22 physical abuse cases. The organization also recorded, 21 food deprivation incidents, seven mental abuse cases that needed immediate psychiatric care, 14 cases of forceful extension of contracts and 62 cases of withholding of passports.³⁰
25. Domestic workers are recognized as "domestic servants" in the Employment Act 1955 and not as workers, and are excluded from some of the rights accorded to employees under the Act, such as provisions concerning their termination of contract, maternity benefits, rest days, hours of work, holidays, as well as termination, layoff and retirement benefits.
26. In 2014, the Ministry of Human Resources drafted 'Regulations (Terms & Conditions of Employment) of Domestic Servants 2014.' However, the Regulations did not adequately protect the rights of domestic workers. In May 2014, the Domestic Workers Campaign Coalition provided detailed recommendations to address gaps in the Regulations. The government put these regulations on hold.³¹
27. In February 2018, Indonesian domestic worker, Adelina Lisao, 21 years of age was rescued from employers who allegedly abused and mistreated her. Neighbours reported that Adelina was made to sleep with the pet dog outside the house and had wounds on the leg, hand and body.³² Sadly Adelina died a day after being rescued. Media report suggests Adelina was a minor when she was brought into Malaysia without proper documents. She was also not paid a salary for the past 3 years. The employers were charged for murder as well as employing an undocumented worker.³³

²⁹ <http://www.abc.net.au/news/2017-07-20/general-police-among-guilty-in-thailand-human-trafficking-trial/8725578>

³⁰ <https://www.thestar.com.my/news/nation/2016/05/02/foreign-domestic-workers-abused-and-sexually-violated-says-tenaganita/>

³¹ In May 2017, the Ministry of Human Resources launched Guidelines and Tips for Employers of Foreign Domestic Helpers, which was devised with the ILO and contains information on laws and best practices related to recruitment and employment of foreign domestic workers. Although select NGOs were initially consulted on the Guidelines, there was no opportunity for NGO input into the final draft. (See "Guidelines, Tips For Employers Of Foreign Domestic Workers Launched." Malaysiandigest.com. 25 May 2017. Available at: <http://malaysiandigest.com/news/677387-guidelines-tips-for-employers-of-foreign-domestic-workers-launched.html>)

³² <http://www.themalaymailonline.com/malaysia/article/domestic-worker-forced-to-sleep-outside-with-dog-dies>

³³ <https://www.nst.com.my/news/crime-courts/2018/02/337588/elderly-woman-charged-murder-indonesian-maid-adelina-nsttv>

28. In January 2018, a couple who were initially charged for murder were sentenced to 10 years imprisonment for starving their Cambodian domestic worker to death after they pleaded to a lesser charge of committing culpable homicide.³⁴

Administration of justice, including impunity, and the rule of law

29. We remain concerned over the policies of the Immigration Department that obstruct the process for non-citizens in seeking redress, in particular, those who suffer abuse by employers. Foreign workers who file cases against their employers have had their passes (work permits) cancelled unilaterally, leaving them with irregular status and vulnerable to arrest, detention, punishment for immigration offences, and deportation. While migrant workers have been able to obtain one-month Special Passes from the Immigration Department permitting them to stay in Malaysia, these passes cost RM100 (USD32), are renewed only for up to three months, and do not include the right to work. Impoverished and desperate, migrant workers often give up their cases, opting either to work illegally or to return home.
30. Migrants with irregular status suffer from harassment and extortion from the police and public. In a survey conducted by the International Rescue Committee in 2012 involving 1,003 respondents, about half of all respondents reported having paid money to Malaysian officials at least once in the past year, with amounts ranging from less than RM50 (USD16) to RM10,000 (USD3,300).³⁵ 65 percent said that they had had to make one to three payments; 38 percent had to pay more than four times.
31. In relation to detention, we echo the concerns expressed by the Working Group on Arbitrary Detention that detainees are unable to challenge the lawfulness of their detention and that they do not enjoy genuine recourse through the courts.³⁶ Detainees are often not informed of the charges against them and denied access to legal counsel.³⁷ When a non-citizen chooses to contest his/her detention, he/she is held in detention and is not allowed bail or the right to work.

Right to privacy, marriage and family life

32. Foreign workers are not permitted to bring their families to Malaysia. They are also not allowed to enter into marriage in Malaysia. These acts are considered a breach of the conditions of their immigration passes, making them liable for deportation. If a foreign worker gets married, he/she loses her job and has to leave Malaysia. If his/her spouse is a Malaysian, he/she can opt to return to Malaysia as a foreign spouse on a Social Visit Pass. This regulation is discriminatory as it only applies to foreign workers and not to expatriates.

³⁴ <http://www.straitstimes.com/asia/se-asia/penang-couple-who-starved-maid-to-death-sentenced-to-10-years-in-jail>

³⁵ International Rescue Committee (2012) *In Search of Survival and Sanctuary in the City: Refugees from Myanmar/ Burma in Kuala Lumpur, Malaysia*, December.

³⁶ General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2.

³⁷ European Parliament (2010); *supra. Fn. 7*

Right to Freedom of Association

33. According to the Trade Union Act 1959, migrant workers, except domestic workers, are allowed to join unions as members but cannot hold office and cannot form their own unions. Most often employers impose conditions and threaten workers from joining unions which exclude them from collective bargaining agreements. This discriminatory practice has allowed employers to continue to violate migrant workers' labour rights.

Right to work and to just and favourable conditions of work

34. As most refugees do not have formal authorisation to work, they are vulnerable to exploitation. A UNHCR survey of refugees in Malaysia found that 64% of refugees' economic conditions worsened since arriving in Malaysia, 72% believed lack of legal status is an impediment to higher income employment, while 42% of refugee households bear debt burdens.³⁸
35. We are concerned about the high incidence of forced labour amongst asylum seekers and refugees. In a study of 1,074 individuals conducted in 2011, Health Equity Initiatives found that around one-third had experienced forced labour.³⁹ 70.2% of respondents who had experienced forced labour showed symptoms of anxiety, while 68.7% showed symptoms of depression. Unemployment was also associated with higher levels of depression, anxiety and stress.
36. The system of outsourcing of labour, introduced by the government in 2006, contributes to exploitation, forced labour, and labour trafficking. Under this system, companies licenced to practice outsourcing are permitted to recruit and manage foreign workers, deploying them to work for different companies. Foreign workers under this system have been forced to engage in work other than what they were promised; have been left with no work and no pay; and have been given inadequate food and accommodation. Breaches of their terms of contract occur frequently, especially in relation to the payment of wages.⁴⁰

Right to health

37. Non-citizens continue to face discrimination with regard to access to health services. They are required to pay foreigner rates at government hospitals.⁴¹ Although refugees registered by UNHCR can obtain a 50% discount on foreigner rates, access is remains an issue, as refugees are still unable to afford treatment. Also, this discount policy is implemented unequally at different hospitals. Foreign spouses also have to pay foreigner rates, no matter the length of their residence in Malaysia – in some cases for more than decades.

³⁸ <http://www.mtuc.org.my/let-refugees-work-legally/>

³⁹ Health Equity Initiatives. (2012) Forced labor, human trafficking and mental health. The experiences of refugees and asylum seekers in Malaysia, HEI: Kuala Lumpur.

⁴⁰ For further information, see SOMO (2013) Outsourcing Labour: Migrant Labour Rights in Malaysia's Electronics Industry, SOMO: Amsterdam, available at http://somo.nl/publications-en/Publication_3922 accessed 6 March 2013.

⁴¹ The full list of charges at Hospital Kuala Lumpur, available on <http://www.hkl.gov.my/>

38. Refugee children are vulnerable to sexual exploitation. In a study conducted by Health Equity Initiatives with 114 refugee children from Burma (aged 10-19), 16.6 percent admitted to their private parts being touched in a way that made them feel angry or scared. Three out of four children did not know where to seek help if they were forced to have sex or if someone were physically intimate with them.⁴²
39. Malaysia practices mandatory testing for foreign workers for 15 infectious diseases and pregnancy.⁴³ A foreign worker tested positive is immediately deported, including pregnant women. They are informed that they are “not fit to work” and are sent back. We are concerned that the right to know and seek treatment is denied, especially with regard to infectious diseases.
40. In order to avoid deportation, pregnant migrant workers choose to give birth outside of the healthcare system, thus facing high risks. There are cases where they abandon employment and live with irregular status. The registration of children becomes difficult, leading them to become stateless.
41. The Malaysian government does not include migrant workers in its HIV/AIDS programmes and thus denies them access to information, counselling, and support services. Migrant workers job security is continuously in threat due to mandatory testing which has led migrants not to seek treatment. Undocumented migrant workers face risk of arrest if they seek treatment in public hospitals and thus do not seek treatment.
42. Employers are required to purchase a mandatory insurance for all migrant workers (except domestic workers) as part of obtaining the temporary work permit. to ensure they can pay the worker the amount stipulated under the Workmen’s Compensation Act 1952 (WCA).⁴⁴ Compensation is capped at a maximum of RM25,000 and is considerably low given the life changing injuries that migrant workers sustain.
43. Many injured and deceased migrant workers are left uncompensated because either the employers do not maintain the insurance, do not know or do not know want to file the claim. Ministry of Human Resources does not do outreach regarding obligations under the WCA. The WCA does not expressly exclude migrant workers without work permits but has not been used to claim compensation for undocumented workers due to the difficulty in proving an employment relationship with employers.⁴⁵ The WCA is outdated and the

⁴² Health Equity Initiatives (2012) *Sexual Education in Burmese Refugee School-Aged Adolescents*, Kuala Lumpur, HEI.

⁴³ FOMEMA Sdn. Bhd. (“FOMEMA”) is the concession company appointed by the Government of Malaysia to manage, monitor and supervise a mandatory comprehensive health and medical screening programme for all foreign workers employed in the country, under Section 8, Subsection 3 (b), and Immigration Act 1959. Source: <http://www.fomema.com.my>

⁴⁴ Workmen's Compensation (Foreign Worker's Scheme) (Insurance) Order 1993

⁴⁵ Section 2(2) of WCA states that if “in any proceedings for recovery of compensation under this Act it appears to the [DoL] or the Court that the contract of service . . . under which the person was working at the time of the accident was illegal, the [DoL or the Court] may, if having regard to all the circumstances of the case . . . it thinks proper so to do, deal with the matter as if the injured person had at such time been a person working under a valid contract of service.”

amounts of compensation are insufficient to provide adequate compensation. The procedures are not simple, and give too much power to the employer.

Right to education

44. Non-citizen children lack access to education at public institutions at all levels. While the Malaysian government has permitted some NGOs to set up informal schools for refugee and migrant children, thousands of children still have no access to education. In an earlier report on his mission to Malaysia in 2007, the Special Rapporteur on Right to Education stated that he “considers one of the most serious education-related problems in Malaysia to be the lack of access to education, at all levels, for children lacking Malaysian citizenship status, including refugee children, asylum-seekers, children of migrant workers, and stateless children, possibly as well street children. A problem common to all these children is the lack of documentation, which is an insuperable obstacle as regards access to education since, as was mentioned previously, no child may be enrolled in any recognized public education institution unless he/she has a birth certificate.”⁴⁶ This also applies to non-citizen children of foreign spouses.

RECOMMENDATIONS

We urge the government of Malaysia to:

1. Abolish the practice of whipping/ caning, in particular, for offences under the Immigration Act 1959/63.
2. Increase the level of cooperation with UNHCR in relation to the arrest, detention, and deportation of all asylum seekers and refugees – including those without official UNHCR documents at the time of their arrest.
3. Implement the recommendations of the Working Group on Arbitrary Detention, which include, *inter alia*, to “rule out detention of asylum-seekers and refugees as well as vulnerable groups of migrants, including unaccompanied minors, families with minor children, pregnant women, breastfeeding mothers, elderly persons, persons with disabilities, people with serious and/or chronic physical or mental health problems”; to “provide for a system of legal aid for immigration detainees” and to “assume the responsibility of improving the conditions in immigration detention centres as a matter of urgency”.⁴⁷
4. Implement the provisions of compensation for trafficked victims provided under the national trafficking laws and provide legal representation to victims and their families.
5. Enact necessary legislations to recognise domestic workers as workers and accord them labour rights enjoyed by other workers.

⁴⁶ General Assembly (2009) Human Rights Council, 11th Session: Report of the Special Rapporteur on the right to education, Vernor Muñoz Villalobos, Addendum: Mission to Malaysia, A/HRC/11/8/Add.2, p. 14.

⁴⁷ General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2, para 119, 123, and 124.

6. Conduct detailed investigations of all deaths in detention – making the results of these investigations available to their families of the deceased – and take concrete measures to prevent such deaths from occurring again.
7. Use Section 55 of the Immigration Act 1959/1963 to exempt vulnerable non-citizens – in particular, victims of exploitation, forced labour and trafficking; children; and asylum seekers and refugees – from provisions of the Immigration Act that breach their rights.
8. Regularise refugees, providing them with the right to work and to reside in Malaysia.
9. Ensure that all non-citizens, including those with irregular status, have unhindered access to justice by providing them with legal aid and allowing them the right to reside and to work in Malaysia (in order to support themselves) until their cases are adjudicated and avenues for appeals exhausted.
10. Take measures to combat the exploitation and forced labour of migrant workers and refugees, both authorised and with irregular status. In particular, regulate the labour sector, especially in the construction sector; agriculture/ plantations sectors; domestic work; and employment through the outsourcing of labour, where there is a higher incidence of forced labour.
11. Ensure that all non-citizens who have experienced human trafficking and forced labor have access to appropriate legal, medical, and protection services regardless of their legal status.
12. Ensure that all non-citizens have universal access to healthcare without discrimination. In particular, provide a one-stop universal access to healthcare service for victims of violence at public hospitals regardless of their documentation status and without the need for a police report.
13. Ensure that all non-citizen children enjoy the right to education.
14. Establish a national legal and administrative framework that recognises the status and rights of asylum seekers and refugees in accordance with the 1951 Convention Relating to the Status of Refugees. Consider becoming a state party to the 1951 Convention and to its 1967 Protocol.
15. Consider becoming a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
16. Implement the recommendations of the Committee on the Elimination of Discrimination Against Women and on the Committee on the Rights of the Child, in particular, those related to the rights of non-citizens.
17. Amend the Workmen's Compensation WCA to bring compensation for migrant workers in par with compensation accorded to Malaysian workers under the Employees' Social Security Act 1969.

18. Set up a Royal Commission of Inquiry on the Perlis “death camps” and implement legal and policy reforms as part of its obligations under international laws against human trafficking.

Dated 29 Mar 2018