

fidh

Fédération Internationale des Ligues des Droits de l'Homme
International Federation for Human Rights
Federación Internacional de Derechos Humanos
الفدرالية الدولية لحقوق الانسان



Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination

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INTRODUCTION

The International Federation for Human Rights (FIDH) completed an international fact-finding mission in Malaysia from 18 – 24 January 2007. The mission was assisted by its member organisation in Malaysia, Suara Rakyat Malaysia (Suaram). In particular, the mission was assisted by Ms. Koula Koumis, a Suaram volunteer, who accompanied the mission to many meetings, assisted in facilitating and briefing the mission members for meetings with refugee groups and worked tirelessly to confirm arrangements. Koula died tragically in a road traffic accident on 4 March 2007 in Kuala Lumpur. This report is dedicated to her and to the impact she made on the lives and human rights of so many people.

The objective of the mission was to investigate the situation of undocumented migrants, refugees and asylum seekers in Malaysia. Its main focus was on the provisions of the Immigration Act and the process of enforcement of immigration laws and policies. The conditions of detention in the immigration depots and the process of removal of persons who contravene the Immigration Act were also addressed. It was not intended to cover issues such as the working conditions of documented and undocumented workers, assess the claims of persons to protection under the Geneva Refugee Convention or deal with the questions relating to trafficking in persons in any depth. By meeting with a range of actors at the national level, the mission sought to gather information provided by those individuals and groups on these issues and to use this information provided as a basis for formulating recommendations in order to guide Malaysia developing and strengthening its human rights protections for these vulnerable groups and remedy shortcomings in the current system.

It must be emphasised that due to the breadth of the mission and its short time frame, it was not possible to treat all issues in significant depth. This report seeks mainly to raise the main issues in the process as it currently stands and highlight some areas that would need to be improved. It is based on the most credible, accurate and detailed information the mission was able to gather through all efforts to seek information from the authorities and other key actors. The mission was geographically restricted to the area of Kuala Lumpur and this report reflects the situation on the peninsula, and not necessarily on the whole Malaysian territory.

The mission sought to meet with the broadest possible range of government, non-governmental and civil society groups, including affected individuals. FIDH aims to do this during the international fact-finding missions it conducts as it ensures that opposing views are gathered and more is learnt with regard to the challenges and concerns relating to particular human rights issues. This facilitates the production of a report that seeks to be balanced, pragmatic and amenable to practical implementation by law and policy-makers.

It was disappointing that the majority of the government authorities that the FIDH requested to interview declined to participate. Furthermore, a significant number of government authorities did not clearly respond to the request and only declined the request at the conclusion of the mission. Regrettably, the mission was denied access to immigration detention centres, after one week of constant telephone contacts from mission organisers. The written refusal of access to Lenggeng and Semenyih immigration depots was only received on 29 January 2007 after the mission concluded. As a result, the mission sought to obtain information on detention centres from ex-detainees and community groups who currently visit detainees.

As the mission found during its investigations, the refusal of access is part of a concerning trend in Malaysia towards denying access to international organisations and local non-governmental organisations (NGOs) to immigration depots.

The small number of meetings that were held with officials were approached in a spirit of openness and the relevant authorities sought to answer the questions posed by the delegation. The mission was notably able to meet with the police and the immigration department. The mission was also supported by the active network of NGOs and various refugee and migrant community groups that welcomed the mission and gave their time to provide information to the delegation. FIDH also wishes to express its gratitude to Suaram for its assistance during the mission.

The mission was able to meet with 110 migrants, nine communities, two lawyers, two journalists, the Human Rights Commission of Malaysia and twelve NGOs, labour organisations and international organisations. Where relevant, details that would have enabled the identification

of persons spoken to by the mission have been omitted to ensure their protection

The report includes Chapter I, explaining the current immigration context in Malaysia from both a domestic and international perspective; Chapter II sets out how refugees and asylum seekers are treated on the ground in Malaysia, their precarious status and the role of the essential IMM 13 Permits; Chapter III examines the legal grounds for detention and also the relative paucity of judicial remedies available to refugees and asylum seekers; Chapter IV is concerned with the specific plight of refugee and asylum seeker children in Malaysia; Chapter V then examines and enumerates the multiple causes for concern regarding conditions of detention and potential punishments. The report concludes with recommendations based on the findings of the mission.

CHAPTER I - THE MALAYSIAN CONTEXT

1. Domestic context

Malaysia has experienced successful economic growth over recent decades. Since 2006 and in the context of *Vision 2020* national program which aims to propel the country towards a developed nation¹ by the year 2020, the government is implementing the Ninth Malaysia Plan (2006 – 2010): a five year development program to address economic, social and cultural challenges. With its gross domestic product (GDP) estimated to be increasing by an average of 5,2% per year since the regional economic crisis in 1997-1998, Malaysia is fast on the way to becoming an industrialised nation. To assume this economic expansion, the country is having recourse to a 3 million additional workforce² to the locally-available labour market.

Statistics and figures on the number of migrants, refugees, asylum seekers and documented migrants present on the Malaysian territory are uncertain due to an absence of publicly available statistics.

On 29 December 2006, the UNHCR had a file load including 9,186 individuals seeking refugee status, 27,109 individuals under Temporary Protection and 10,061 individuals recognised as refugees, a total of 46,356 persons. The main recognised groups of refugees in Malaysia are Acehnese, Rohingya, Burmese (the Chin, Shan, Kareni, Arakan, Kachin and Mon) and Nepali. The number of Sri Lankan refugees is increasing in Malaysia.

The largest groups of refugees are 14,804 Acehnese who were granted Temporary Protection and 12,133 Rohingya who were also granted Temporary Protection. Of the individually recognised refugees, the Chin from Burma makes up the largest group (6,630 people).

According to the Director of Enforcement of the Immigration Department met by the mission, there are reportedly 1,9 million foreign workers in Malaysia and 5 to 600 000 people would be there illegally.

In December 2006, Mr. Syed Shahir, President MTUC, confirmed that there are about 1,8 million registered (or documented) migrant workers in Malaysia. He added that according to government estimates, there is an equivalent number of unregistered (or undocumented) migrant workers in Malaysia. According to him, the actual figure of unregistered (or undocumented) migrant workers in

Malaysia could be about 5 million. Malaysian labour force for the 3rd quarter of 2005 according to the Malaysian Department of Statistics was 10,498,600 and that means the number of migrant workers (both documented and undocumented) is about 30% to 50% of the total Malaysian labour force.³ The major consideration of government responses to migrants and refugees has been driven by concerns about their large numbers and the need to control further irregular migration.

The foreign workers come from twelve countries in the region (ASEAN countries and neighbouring countries)⁴ supplying a much needed workforce in Malaysia's agricultural, construction, manufacturing and services sectors. Of the 1,8 million persons registered in the statistics by the Ministry of Home Affairs, the largest number of migrants come from Indonesia (1,2 million) and works mainly in the plantation sector (381,582 of them) followed by Nepali (192,332 persons registered) mostly represented in the manufacturing industry (159,990). According to the figures, Indian workers (134,946) are legally employed in the same sector (34,685) but also in the services (61,273) and in the plantations (27,759). Other sending countries include Burma (88,573), Vietnam (81,194), Bangladesh (55,389), Philippines (21,694), Pakistan (13,296), Cambodia (5,832), Thailand (5,753), Sri Lanka (3,050) and China (1,295).⁵

Based on official figures, the foreign working force seems to be constantly growing. However, no consistent national immigration policy has been decided by the authorities. There is a total absence of coordination between the various national Ministries involved in the management of migrant workers. The absence of a written immigration policy or immigration quotas also reflects the ad hoc approach of the government; the policy in this field seems mainly reactive.

Various members of civil society confirmed that the viability of the Malaysian economy is deeply related to this illegal immigration. Malaysia, as with many countries of immigration, relies on foreign workers for the '3D jobs' (Dirty, Dangerous and Difficult), often eschewed by nationals. However, many persons met by the mission said that the status of migrants in Malaysia is not properly managed nor planned in the long term, and that they are not adequately protected against unscrupulous recruitment agencies and employers. The fact that the Memoranda of Understanding (MoU) signed between the countries of origin and Malaysia

fall under the Official Secrets Acts makes it all the more difficult to control the terms of such agreements.

In addition to the regular arrests and raids against undocumented migrants in the street as well as in their houses perpetrated by the police and the RELA (the national civil volunteer forces involved in the arrest of undocumented migrants), the government launches every two or three years huge crackdowns to regulate the number of undocumented foreigners in its territory. These crackdowns undoubtedly contribute to the creation of a climate of fear in the migrants' communities. Organisations for the protection of human rights and labour rights denounced these operations as 'abusive, intolerant and brutal'.⁶ The treatment of detainees in the immigration detention centres, the so-called 'depots', and the corporal punishments (whipping) against migrants are part of a policy of deterrence against them. Actually, this punitive approach unfortunately replaces any full-fledged migration policy.

2. International context

Malaysia is not a party to many of the key international human rights instruments. Malaysia is not a party to the *1951 Convention relating to the Status of Refugees* nor to the *1967 Protocol relating to the Status of Refugees*, the key international instruments relating to the protection of refugees. As a result, Malaysia does not provide any specific formal protection to people who have fled their own country due to a fear of persecution on Convention grounds. In addition, Malaysia is a State Party to only two of international human rights instruments: the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), acceded to on 5 July 1995 and the *Convention on the Rights of the Child* (CRC), acceded to on 17 February 1995.⁷ Regarding the latter, Malaysia maintains eight reservations concerning:⁸ the principle of non-discrimination (Article 2), the obligation to make primary education compulsory and available free to all (Article 28(1)(a) and the prohibition of torture or other cruel, inhumane or degrading treatment or punishment, as well as arbitrary detention (Article 37).⁹ The paucity of Malaysia's international obligations is a significant contribution to the poor situation of refugees, asylum seekers and undocumented migrants in that country.

Malaysia has not ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICPMW), the main international instrument for the protection of migrant

workers and their families. Having entered into force on 1 July 2003, this Convention covers the protection of most aspects of the situation of both irregular and legal migrant workers including the protection of human rights (Part III).

In the field of the migration-related conventions of International Labour Organisation, Malaysia ratified the *Migration for Employment Convention (Revised) 1949* (n°97) on 3 March 1967. This Convention focuses on the protection and information of legal migrants, by regulating the conditions of the migrations aiming at finding employment and establishing measures to ensure equal treatment of migrant workers with nationals. Malaysia has not ratified the *Migrant Workers (Supplementary provisions) Convention (n°143) of 1975*, set up to address the issues of migration in abusive conditions and the equality of opportunity and treatment of legal migrants towards national workers. It is notable also that Malaysia has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, nor the Protocol against the Smuggling of Migrants by Land, Sea and Air.

As a founding member of the ASEAN, Malaysia attended the ASEAN Summit on 13 January 2007 in the Philippines at which the *Declaration on the Protection and Promotion of the Rights of Migrant Workers* was adopted.¹⁰ As stated in the general principles of the Declaration, ASEAN countries pledge to strengthen their cooperation with regards to the respect of fundamental rights and dignity of migrant workers and members of their family. This interest of ASEAN countries in working out regional solutions to deal with movement of people had been expressed previously in the *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*. This Declaration was adopted on 29 November 2004 and sets up measures to address transnational crimes of trafficking, e.g. by the establishment of a regional focal network, the reinforcement of the protection of the integrity of the respective official documents, the establishment of regular exchanges of view on migratory flows and the set up of a better cooperation between the respective immigration and other laws and enforcement authorities.

3. Legislative framework

The *Immigration Act 1959/63 (Act 155)* forms the cornerstone of the Malaysian immigration system. It was modified by the Immigration Regulations 1963. In addition, the *Passports Act 1966 (Act 150)* specifies requirements relating to presentation of passports on entering or leaving

Malaysia, possession of the relevant visas. The Malaysian Bar Council is currently undertaking a comprehensive review of the Immigration Act. FIDH welcomes this initiative.

The main legislation relating to detention facilities and prisons are the Prisons Act 1995 (Act 537), the Prisons Regulations 2000 and the Immigration (*Administration and Management of Immigration Depots*) Regulations 2003.

There are currently developments relating to the introduction of specific legislation to tackle the increasing problem of human trafficking. On 24 April 2007, the *Anti-Trafficking in Persons Bill 2007* ('the Bill') was introduced into Parliament for first reading. It was subsequently passed by Parliament.

On 17 March 2007, the Malaysian Bar Council passed a motion at its Annual General Meeting, calling for the repeal of the legislation that established RELA and extended the powers of RELA officers to, amongst other things, enforce immigration law.¹¹ The FIDH is supportive of this call, because the involvement of poorly trained volunteer RELA officers who are paid to secure arrests in the enforcement of immigration law is highly questionable. The fact that those powers can be exercised without a warrant violates the due process of law, and the conduct of RELA officers in raids on migrant communities is of extreme concern

1. 'Vision 2020 which outlines the progress towards a developed nation by the year 2020 is a key blueprint for the country's future. It calls for total development and envisions that by 2020 Malaysians will live in harmony, in a country which is economically dynamic and robust, democratic, liberal, tolerant, caring, progressive and prosperous, with a society that has strong moral and ethical values.' Committee on the Rights of the Child, Consideration of reports submitted by states Parties under Article 44 of the Convention, Initial report of States parties due in 1997 : Malaysia, UN Doc. CRC/C/MYS/1, p. 7.

2. Tenaganita, 'Malaysia, Migrant Workers, Access Denied', Kuala Lumpur, 2005, p. 3, Labour resource center.

3. *Opening speech by Syed Shahir, President MTUC at MTUC/ILO Follow up Workshop on Migrant Workers in Malaysia, Sheraton Subang Hotel, 4-6 December 2006*, <http://www.cawinfo.org/Article323.html?POSTNUKESID=43816f908a58fe2b92b2535465c9c628>.

4. We here base our affirmation on the 'Statistics of foreign workers by Nationalities and Sector From 01/01/2005 until 31/12/2005'. These figures were published in a report of CARAM Asia (Coordination of Action Research on AIDS and Mobility in Asia) : 'State of Health of Migrants in Malaysia'. The source of these statistics is the Ministry of Home Affairs of Malaysia. These statistics were obtained from the Cambodian Embassy in Kuala Lumpur.

5. See also statistics available at http://www.unescap.org/stat/meet/egm2006/ses.4_Malaysia.pdf

6. See 'Raid an excessive use of power, say rights groups', Malaysiakini, 11 March 2003.

7. According to the UNHCHR, on 19 April 2007, they were 185 States parties to the CEDAW and on 13 July, 193 States parties to the CRC. On 19 April 2007, they were 160 States parties to the ICCPR and 156 to the ICESCR. They were 144 States parties to the CAT on the same date.

8. Malaysia ratified the CRC with reservations to articles 1, 2, 7, 13, 14, 15, 28, paragraph 1 (a) and 37. See UNHCHR website <http://www.unhchr.ch/tbs/doc.nsf/73c66f02499582e7c1256ab7002e2533/d0891bc12efafb34c1256b7d00542523?OpenDocument>

9. A short time before this Fact Finding mission and nine years after it was due (March 1997) Malaysia introduced, on 21 December 2006, its first periodic report to the Committee.

10. <http://www.aseansec.org/19264.htm>

11. The Malaysian Bar 'Motion for the end of the state of emergency and an end to law enforcement by the untrained and armed people's volunteer corps (RELA)' Annual General Meeting of the Bar Council of Malaysia, 17 March 2007, accessed at <http://www.mfasia.org/mfaStatements/F95-MalaysiaBarResolution.html>.

CHAPTER II - THE *DE FACTO* STATUS OF REFUGEES AND ASYLUM SEEKERS

1. Status and treatment of refugees and asylum seekers

Malaysian immigration law does not provide special protection or procedures for asylum seekers, refugees or trafficked persons nor does it make special provisions for children or women, including pregnant women. As a result, the status of 'refugee' does not exist in Malaysian law and, at least formally, the fact that a person has the recognition of the United Nations High Commissioner for Refugees (UNHCR) does not attract any special rights in Malaysian law. Therefore, refugees and asylum seekers are equally subject to the Immigration Act as other undocumented migrants, such that if they unlawfully enter or remain in Malaysia, they are liable to being imprisoned, whipped, detained and removed.

Despite an absence of formal recognition and protection, those who have obtained recognition from the UNHCR may be able to enjoy a basic *de facto* status at the national level. This recognition provides them with status in international law, and some very limited dispensation from the enforcement of immigration law in Malaysia. However, there remains a large degree of ambiguity in the conduct of the authorities towards refugees and asylum seekers, particularly since the amendments to the Immigration Act in 2002.

Refugees and asylum seekers may apply at the office of the United Nations High Commissioner for refugees in Kuala Lumpur. After assessing an applicant's case against the criteria set down in the 1951 Convention Relating to the Status of Refugees, an applicant may receive a positive decision from UNHCR recognizing them as a person requiring temporary protection (in which case a temporary protection card is issued) or as a refugee (in which case a refugee card is issued).

Practically, persons holding UNHCR documents are generally expected to be protected from arrest and prosecution. This dispensation, albeit informal, derives from written directions issued by the Attorney General in 2005 stating that it would refrain from prosecuting holders of UNHCR documentation. The Immigration Department and the other law enforcement agencies have been less clear in their approach, although general statements have been made, the mission was told, suggesting that the arrest of UNHCR recognised persons should be avoided and that there should be co-ordination with the UNHCR should arrests take place.

In any case, the mission heard from many people from different refugee groups who alleged that they or persons holding UNHCR documentation have been arrested and detained by RELA, or the police.¹² The mission also received a number of allegations that UNHCR document holders have been beaten or otherwise mistreated in custody when they have produced their documentation. Some said that there is now a verbal consensus amongst law enforcement authorities that if a person holding UNHCR documentation is arrested, he or she will be handed over to the UNHCR, which should be encouraged. The UNHCR also has a phone hotline which apparently is used by police and law enforcement officers to check the veracity of documents.

Statistics from the UNHCR as of 29 December 2006, indicate that a total of 410 asylum seekers, 44 people under Temporary Protection and 278 recognised refugees were in detention at that date, a total of 732 people, which indicates that significant numbers of refugees and asylum seekers are not released from detention while indeed they should not have been detained in the first place. Of these 732, 92 were indicated to be 'minors'.

The mission was told by the Director of Enforcement of the Immigration Department that sometimes holders of UNHCR documentation are arrested although it is avoided where possible, as a means of showing the public that there are no 'double standards' in relation to undocumented migrants, but that often they are released to the UNHCR, particularly in the case of mothers, children and the chronically ill. He suggested that there is no written policy as there are benefits in having a certain degree of flexibility in implementation, as it allows them to work with the UNHCR.

FIDH stresses that 'double standards' should, on the contrary, be the rule, in the sense that refugees and asylum seekers should enjoy a specific regime of protection because they constitute a particularly vulnerable group and are therefore considered to merit special protection under international human rights standards.

2. IMM 13 Permits

The only means through which a type of status may be legally accorded to persons recognised as refugees or asylum seekers is through an exercise of discretion by the Minister under section 55 of the Immigration Act. Section 55 provides that the Minister may by order exempt any

person or class of persons, absolutely or conditionally, from any of the provisions of the Act. This is the legal basis on which de facto 'refugee' protection has been provided to certain groups and individuals through the issuing of IMM 13 permits.

IMM 13 visas are generally a type of temporary residence permit. They can be issued under any conditions set by the Minister. There can be different conditions attached to the IMM13 visas. If the conditions allow the IMM13 holder to access to education, the children can go to public school, but there are cases access to education was denied where the Education Ministry then asked for a student visa. There is no coordination among the Immigration Department and the Education Ministry. Private schools also require student visa. The IMM13 visas are temporary in nature and usually must be renewed every 12 months for a fee of 90 ringgit.

Although the IMM 13 does provide at least basic, temporary status to refugees in Malaysia, it should not be seen as sufficient.

The Minister's decision is to be based on information provided by the applicant as to his or her reasons for seeking exemption. In practice, however, the decision is based on unknown criteria and there is no way for the individual to challenge the decision. The fact that it operates on the basis of an unfettered discretion, and is

hence unreviewable, and the fact that the visas may be issued on any conditions deemed fit by the Minister and that, presumably, the Minister has the power to make another decision to cancel the visa, makes the IMM 13 visa nothing more than a basic stop-gap. In the absence of ratification of the Refugee Convention and its implementation or other effective legislation at the national level, however, the IMM 13 is the best hope refugees have.

The precariousness of the IMM 13 system was demonstrated in the recent experience of a large number of Rohingya refugees. From 1 August 2006, the government started a process of registration of approximately 12,000 Rohingya refugees, some of whom had been in Malaysia since 1982, with a view to processing IMM 13 visas for them. A large number of Rohingya refugees have been in Malaysia for more than a decade without any regularisation of their status. The registration process was then suddenly stopped without warning and suspended following apparent allegations regarding the corruption of intermediaries involved in the registration process.¹³

12. See, for example, SUARAM, 'Over 20 Burmese Asylum Seekers and Refugees Arrested by RELA', Press Statement, 5 April 2007, accessed at http://www.suaram.net/index.php?option=com_content&task=view&id=84&Itemid=31 and SUARAM, 'Release all Refugees and Asylum Seekers and Stop the Use of RELA Immediately', Press Statement, 30 April 2007, accessed at http://www.suaram.net/index.php?option=com_content&task=view&id=19&Itemid=29.

13. SUARAM, 'IMM 13 Registration Exercise for Rohingya Refugees Should Continue', Press Statement, 30 August 2006.

CHAPTER III - RELA, THE PEOPLE'S VOLUNTEER CORPS

1. Overview

There are three main authorities responsible for enforcing immigration law in Malaysia; the Royal Malaysia Police, the Immigration Department and Ikatan Relawan Rakyat Malaysia (People's Volunteer Corps - RELA).

The Ikatan Relawan Rakyat Malaysia recently re-named itself as Ikatan Relawan Nasional (here after called 'RELA', the Bahasa acronym) is a people volunteer corps formed on 11 January 1972 under the *Emergency (Essential Powers) Act 1964 (Security Force)*. RELA was established to provide opportunities for patriotic citizens to become members of a government security agency which was formed to assist, maintain and safeguard peace and security in the country. This volunteer force is meant to help the country in times of emergency and, in times of peace, aside of the community developments (the RELA BAKTI Project), it focuses its attention on security matters, thus, among these on the illegal migration.

During times of peace, the security duties of RELA encompass the concept of the 'eyes and ears of the government'. Its function is thus to collect and provide information to the relevant government agencies such as the police, Customs, UPP (Unit Pengurusan Peperiksaan, Anti-Smuggling Unit), and Immigration regarding elements 'that might pose a threat to the security of an area'. Since the amendment of the Essential (Ikatan Relawan Rakyat) Regulations in 2005, RELA members are authorized to bear weapons, including firearms and to use them in the execution of their duties. The Essential (Ikatan RELAWAN Rakyat) (Amendment) Regulations 2005, which came into effect on 1 February 2005, expanded the powers of RELA to include the 'right to bear and use firearms, stop, search and demand documents, arrest without a warrant, and enter premises without a warrant, and all these powers can be exercised when the RELA personnel has reasonable belief that any person is a terrorist, undesirable person, illegal immigrant or an occupier'. Under the *Public Authorities Protection Act 1948*, RELA officers are immune from prosecution in relation to their conduct.

The perception and treatment of undocumented migrants in Malaysia has hardened over recent years, notably with the introduction of the *Immigration (Amendment) Act 2002*, which entered into force on 1 August 2002 that, inter alia, introduced more stringent punishments for offences

against the Immigration Act. In addition, authorities have since August 2002 addressed the issue by the organisation of huge crackdowns against them alternated with amnesty periods during which undocumented migrants are allowed to travel back to their country of origin. *The Star* exposed this policy in these words: "Ops Tegas Operation" was launched [in March 2005] with the aims to flush out undocumented migrants, then estimated to be some 800000 people. This sort of fiery rhetoric does not augur well for the situation of undocumented migrants and may be viewed as a worrying incitation to overzealous action by immigration enforcement officers, particularly RELA.

The number of RELA volunteers is estimated to be more than 400000 reservists; they are paid 80 Ringgit per person arrested. The scale of these raids was vividly illustrated by the figures produced on 29 September 2006 in the newspaper '*The Star*'. In this article it was written that for the 94010 persons screened by the RELA forces, 17700 persons had been arrested. The majority of them were Indonesian (12076 persons), followed by people from Myanmar (2089), then Bangladeshi (923), Indian (693), Thai (402), Chinese (43), and other nationalities (1200). In this article of *the Star*, the director of RELA from Selangor and Negri Sembilan, Khairy Mohd Alwee, invites everyone who has information on illegal immigrants in their area to contact a specific phone number.

2. Concerns

A number of persons and NGOs met by the mission expressed grave concerns regarding the powers of RELA to enforce immigration law, particularly in the context of the lack of training and supervision of RELA members. During the raids, all sorts of people are caught up, even though they have work permits, a person of concern (POC) letters from the UNHCR or other authorizations. The raids are conducted without adequate checks to ensure large groups of people are not incorrectly arrested. Human Rights Watch wrote in its article 'Aceh Under Martial Law: Problems faced by Acehnese Refugees in Malaysia' that 'despite the criticism and pressure, police raids on Indonesian settlement areas continue. No distinction is made between Indonesian undocumented persons, asylum seekers, and refugees.'

The information collected during the FIDH mission showed that these raids are conducted with unnecessary use of

violence. A Rohingya reported this incident to the FIDH mission: during a raid, a RELA volunteer thumb on him various times until his leg was broken. He was then brought to the police station, locked in a detention centre and then deported at the end of the year. Another member of this community told that his motorbike was stolen during a raid after he was beaten on his back. The Burmese community reported the case of a seventeen year old boy who was kicked by members of RELA on his stomach.

Several victims of RELA raids and persons arrested by immigration officers and the police met during the mission explained that if you are arrested in the street you should better directly give 50 or 100 Ringgit to the officer. If not, at the police station, another negotiation will be engaged with the migrant community: the price to be released will be fixed around 2000, sometimes 3000 Ringgit by the police. Various interviews confirmed the bribes and extortion, adding that RELA people are stealing inside the house and keeping the wallets, money and passports of the one they arrest.

The raids reportedly take place both in the living quarters and in the working places of migrants. E.g., in mid-February 2006, four dead bodies were recovered from a lake in the area of Selayang. The day before, there had been an important RELA raid in this area. This event was reported in the BBC media and a week after, on the Asian Centre for Human Rights website raising the possible link between these deaths and the raid of these untrained volunteer. FIDH believes that a prompt and impartial investigation should be carried out on those deaths.

In practice and even at the level of the authorities, the nature of the relation between the RELA and other Ministries seems to be controversial. The head of the police met by the mission claimed that 'so far we don't work with RELA'. He recognized the crimes perpetrated by the RELA and confirmed that these occur when the RELA volunteers were on their own. On the other hand, during the meeting he held with the FIDH members, the Director of Enforcement of the Immigration Department confirmed the close cooperation between the immigration officers and the RELA: according to him, RELA will arrest people and hand them over to the immigration officers who will check their status.

Since RELA is a government agency, FIDH wants to recall Malaysian authorities that they are fully responsible for RELA's conduct. FIDH strongly urges the Malaysian

authorities to make sure that such violent crackdowns are not carried out in the future anymore, and that the officials or members of RELA involved be duly prosecuted. FIDH fears that the categorization of immigrants with "terrorists" in the law may encourage their rough treatment and reflects that their special needs and circumstances (particularly in the case of refugees) are not properly understood or taken into account in the framing of the involvement of RELA in enforcement. FIDH also recommends that RELA volunteers should not be involved anymore in the enforcement of the immigration law. Enforcing laws requires proper training and full time capacity.

3. Recent developments

FIDH welcomes the fact that the authorities met were conscious of the abuses that have been perpetrated by RELA. The national human rights commission SUHAKAM confirmed during its interview with the FIDH mission that it has received several complaints regarding the exactions of RELA and thus recognized the problems of extortion by RELA members, their lack of training and of supervision. In 2006, SUHAKAM organised a workshop and trained 548 persons of RELA on the respect of human rights. According to the national human rights commission, the situation is taken very seriously and there will be other trainings provided to the governmental enforcement agencies by the Judicial and Legal Training Institute (ILKAP).

On 17 March 2007, the Malaysian Bar Council passed a motion at its Annual General Meeting, calling for the repeal of the legislation that established RELA and extended the powers of RELA officers to, amongst other things, enforce immigration law.¹⁴

Another welcome development is the scrapping in June 2007 of the bounty system for RELA in the arrest of undocumented immigrants. As noted by SUARAM, "it will certainly decrease the unnecessary motivation factor for the RELA to conduct regular and intensive raids and rampage on the communities of migrant workers, asylum seekers and refugees in the wild hunt for illegal immigrants".¹⁵ The bounty system was previously giving the RELA personnel a reward of RM80 (USD25) for arresting an undocumented immigrant.

According to Suaram¹⁶, in June 2007, the Home Affairs Ministry announced its plans to restructure the RELA into a

separate department with greater authority and even powers to source out its own funding. The Ministry announced that it plans to table a bill on RELA in parliament which will make RELA a full-fledged law enforcement department.¹⁷ Some rights groups have expressed fears that the proposed bill to empower RELA with further enforcement powers will legitimise and strengthen the powers of arrest, search, and detention functions of a body which has been known to act arbitrarily and in an overzealous manner.¹⁸ In October 2007, Home Affairs Minister Mohd Radzi Sheikh Ahmad reiterated that there was a proposal to upgrade RELA into a department.¹⁹

14. The Malaysian Bar 'Motion for the end of the state of emergency and an end to law enforcement by the untrained and armed people's volunteer corps (RELA)' Annual General Meeting of the Bar Council of Malaysia, 17 March 2007, accessed at <http://www.mfasia.org/mfaStatements/F95-MalaysiaBarResolution.html>.

15. See http://www.suaram.net/index.php?option=com_content&task=view&id=132&Itemid=29

16. SUARAM, Malaysia Civil and Political Rights Report 2007: Overview.

17. Abdul Rahman Ibrahim, 25 June 2007, Second Meeting of the Fourth Session of Eleventh Parliament, Hansard, DR.25.6.07, p. 3, <http://www.parlimen.gov.my/hindex/pdf/DR-25062007.pdf> (last accessed 3 December 2007). See also "Rela dept bill to be tabled", The Star, 26 June 2007.

18. For instance, Amnesty International Malaysia, 5 July 2007, Press statement: "RELA Bill will worsen the climate of arbitrary law enforcement".

19. "Rela may be upgraded to department", Bernama, 28 October 2007.

CHAPTER IV - JUDICIAL REMEDIES AND DEPRIVATION OF LIBERTY

1. Detention

A non-citizen arrested or detained under the Immigration Act can be held for up to 14 days before being brought before a Magistrate. The Magistrate will then make an order as to his or her detention for such period as required by an immigration or police officer to investigate offences against the Act, or by an immigration officer to make inquiries or effect the removal of the person (paragraph 51(5)(b)).²⁰ Under section 117 of the Criminal Procedure Code, further detention may only be ordered for a period of 14 days.²¹ In contrast, a citizen may only be held for 24 hours before being brought before a Magistrate (paragraph 51(5)(a)).

A person reasonably believed to be liable for removal may be arrested without warrant by any immigration officer or senior police officer and may be detained in any prison, police station or immigration depot for up to 30 days pending a decision as to whether a removal order will be made (section 35).

Subsection 34(1) provides that where a person has been ordered to be removed from Malaysia, that person may be detained in custody for such period as may be necessary in order to make arrangements for his or her removal, but he or she may be released on conditions if an appeal against the removal order is made under subsection 33(2). Hence, the detention can be indeterminate. Under subsection 34(3), persons who are detained pending removal may be detained in any prison, police station or immigration depot, or any other place appointed by the Director General.

2. Judicial remedies

A person who is being detained at an immigration depot is deemed to be in lawful custody (section 51B). Furthermore, section 59A excludes judicial review of any

act done or decision made by the Minister or the Director General (defined to include any immigration officer exercising his power), unless it raises a question of compliance with the procedural requirements of the Act. Subsection 59A(2) defines 'judicial review' widely to include a broad range of actions under administrative law and any other suit or action.

The current form of the Immigration Act raises a number of concerns with regard to the administration of justice. For example, the length of time a person may be held before being brought before a Magistrate is overly long and may lead to abuses. The fact that the burden of proof in terms of legality or to produce documents proving legality is on the migrant himself or herself leads to a number of problems when employers or agents hold passports and permits. The powers conferred on enforcement officers are also very wide. The Act in certain cases permits indeterminate detention and does not allow adequate judicial supervision. The Act also permits detention in any place designated by the Director General which may result in widely varying conditions of detention and detention in places that are not adequately inspected or supervised. Further, the ouster clause that removes the right to challenge decisions under the Act on a number of administrative law grounds and removes the right to be heard is contrary to accepted notions of the rule of law, the right to an effective judicial remedy in case of human rights violation as well as the 'non-usurpation of judicial power' (the reviewability of government decisions).

Further, the Act does not assist migrants with key legal issues such as abuse by employers and unpaid wages. Migrants can avail themselves of other legal provisions or actions in an attempt to obtain redress, for example employment tribunals and actions in civil law, but there are significant barriers to access to justice and financial constraints that make this extremely difficult in practice.

20. It appears from this section that this 'period' could be for any length of time, limited only by the maximum period specified by the provision under which he or she is detained (paragraph 51(5)(b)).

21. Information gathered by the mission suggests that section 117 applies to the detention of non-citizens, such that the detention of a non-citizen may only be extended by the court for a further 14 days, to a maximum of 28 days before a person must be charged, released or removed. It could be argued that in fact a person could be detained longer than this, depending on the court's interpretation of subsection 51(6). Apparently, there has been a practice of courts issuing multiple remand orders, even though no investigations have been undertaken in the first period: Suaram, Suara Rakyat Malaysia, Malaysia, *Human Rights Report 2005, Civil and political rights*, Petaling Jaya, 2006, p. 55.

CHAPTER V - THE SITUATION OF CHILDREN

1. Overview

Child refugees and asylum seekers are in need of special protection and assistance in the process of immigration and enforcement of immigration law. Refugee and asylum seeking children are particularly vulnerable to agents, human traffickers and other criminal groups and are particularly at risk when held in detention, whether accompanied or unaccompanied. However, as with adults, no special provision is made in Malaysian law to protect child refugees and asylum seekers. Women refugees and asylum seekers are also particularly vulnerable to sexual abuse and other forms of exploitation and no particular provision is made for their vulnerabilities.

The Convention on the Rights of the Child ('CRC') provides some limited protection to child refugees and asylum seekers. In particular, all State Parties are bound by Article 3(1), which states that in all actions concerning children, "the best interests of the child shall be a primary consideration". As a State Party to the Convention on the Rights of the Child ('CRC'), Malaysia is also required by Article 22(1) to "take appropriate measures" to ensure that child refugees of asylum seekers receive "appropriate protection and humanitarian assistance". In addition, Malaysia is required to cooperate with appropriate international, governmental and non-governmental organisations in providing such assistance to children and ensure that refugee and asylum seeking children enjoy their rights under the CRC.

Malaysia's domestic legislation in this field is the Child Act 2001 (Act 611), that, *inter alia*, makes certain provisions for protection of children and their prosecution (Part X) and detention. It defines children to be those under 18 years of age (section 2). Sections 42-43 criminalise the procurement of children for the purposes of prostitution and Part VIII criminalises trafficking in and abduction of children.

2. Daily life of children refugees and asylum seekers

Refugee and asylum seeking children are barred from government schools, which is of particular concerns considering the length of time some refugee groups have spent in Malaysia. The mission was told that often children attend 'informal' or charitable schools that broadly follow

the school curriculum, but are not recognised by the authorities and are generally considered to be of lesser quality. The CRC previously recommended that Malaysia "take urgent measures to ensure that asylum-seeking and refugee children have access to free and formal primary, secondary and other forms of education, and that in particular refugee and asylum-seeking children who are engaged in informal education have access to official exams".²²

The situation of the children of migrant workers is also problematic: access to education is very poor; since families of migrant workers are afraid to register their children born in Malaysia, these children generally do not get a birth certificate.

3. Detention

Treatment of detainees and conditions in prisons are regulated by the Prison Act and, in greater detail, by the Prison Regulations 2000. This legal framework includes special provisions for vulnerable detainees as women, children under 21 and young babies held in prison.

In January 2007, the detention figures transmitted by the Malaysian government delegation to the Committee on the Rights of the Child²³ mentioned that at that time, a total of 360 children were living in deportation centres with their mothers.

The food provided could reportedly not be considered to meet the dietary requirements of these women and their children. According to an individual met by the mission, pregnant women have to stay long hours sitting, sometimes more than three hours at a stretch and are required to execute the 'sit down and stand up' position various times. For the delivery of the baby, they are transferred to outside hospitals, they are then apparently brought back to the immigration depot and live with their babies inside the depot.

The conditions of detention of children reportedly vary, according to the management enforced by the officer-in-charge of the depot and its structural arrangements. The Immigration Regulation leaves the segregation of detainees according to age and sex or any other reason to the discretion of the Officer-in-Charge.²⁴ Some depots are provided with a special recreation place for the children

and their mothers and with special facilities for them too. In some depots, children detained are separated from adults from the age of seven; in other ones, they are not, which may potentially expose them to abuses. Former detainees told FIDH that if there were unaccompanied minors in detention, they would not be separated from the adult detention area and would be usually held with the women detainees.

In its most recent Concluding Observations regarding Malaysia, the Committee on the Rights of the Child in its 44th Session on 2 February 2007 noted a number of areas in which Malaysia urgently needs to improve its treatment of child refugees and asylum seekers and the children of refugees and asylum seekers. In relation to the legal framework in Malaysia relating to refugees and asylum seekers, the Committee recommended that Malaysia accede to the Geneva Convention and its Protocol, amend the Immigration Act 1959 and “develop a legislative framework for the protection of asylum-seeking and refugee children, particularly unaccompanied children, in line with international standards”.²⁵

It is therefore important to recall that the United Nations Standards Minimum Rules for the Administration of Juvenile Justice²⁶, recommend that detention of children pending trial should be used only as a measure of last resort, considering the vulnerability and the special needs of children in their different stages of development. Deeply concerned about the situation of children in the detention camps, the Committee on the Rights of the Child recommended to Malaysia as a State Party to the Convention on the Rights of the Child to “[t]ake urgent measures not to detain children in connection with immigration proceedings, unless it is necessary to protect their best interests and for the shortest time possible, and establish a screening process to ensure that groups with special needs, such as refugees and asylum-seekers, including their children, are rapidly identified”.²⁷ It also stated that “[i]f detention is necessary in a particular, exceptional case, [Malaysia should] take all measures necessary to make this as short as possible and provide for special protection and assistance measures for refugee and asylum-seeking children and their families while in detention, in line with relevant international standards”.²⁸ It pointed out to the fact that the implementation of the Act ‘has resulted in detaining asylum seeking and refugee children and their families at immigration detention centres, prosecuting them for immigration-related offences, and subsequently imprisoning and/or deporting them.’²⁹

The Committee also recommended that Malaysia enact legislation to deal with the issue of unaccompanied minors, in line with international law.³⁰ The very basic regime set down by the Immigration Depot Regulations does not guarantee adequate legal protections to ensure the rights of children are respected. Although regulation 11 foresees that the children of a detainee under 12 years of age will remain together with either of his or her parents, there is no provision for the protection and special treatment of adolescents and unaccompanied children. As a result, it is common that they remain with the adults of their gender in the same block, depending on the way depots are managed by the officer in charge, without any particular measures for their own safety. Detention of children for immigration purposes should, as required under international human rights law, be clearly prohibited as a principle, and only allowed in exceptional cases for the best interest of the child and for a time as short as possible.

We underline that when involving children, indefinite periods of deprivation of liberty are in absolute contradiction with Malaysian’s international engagements. As one of the States Parties to the Convention on the Rights of the Child, Malaysia should respect article 37 (b) which requires that no child shall be deprived of his or her liberty unlawfully and arbitrarily and only in the best interest of the child (Article 2 of the Convention). FIDH recalls that arrest and imprisonment or detention of children have to be prohibited in principle, and when they have to take place, in exceptional circumstances and only for the best interest of the child, it may only be in conformity with the law, as a measure of last resort and for the shortest appropriate period of time.³¹

4. Recent developments

In an extremely encouraging development towards a protection of the most vulnerable, some cases were reported to the mission of individual advocacy resulting in the release of children to the UNHCR.³² It was the result of a long process of negotiation initiated by a group of local NGOs and locally based international NGOs. It is understood that it has been agreed that NGOs will be provided access to children on a case by case basis. On 22 March 2007, there was another important release of a group of 25 children and pregnant women who were being held in an immigration depot.³³ They were recognized as persons of concern by the UNHCR. These releases demonstrate recognition by the authorities of the particular

vulnerabilities of children and pregnant women in detention.

FIDH encourages these developments and hopes that they may concretize into more durable solutions for children, whether in the form of a clear policy protecting them from detention, or ideally, legislation according them with protection from detention and prosecution.

22. Para 84.

23. Committee on the Rights of the Child, *Summary record of the 1217th meeting*, 44th session, 19 February 2007, CRC/C/SR.1217, Paragraph 42.

24. *Immigration (Administration and Management of immigration depots) regulation 2003*, Section 8. Segregation of detainees : 'The officer-in-charge may segregate detainees according to age or sex or for any reason he deems fit.'

25. Committee, paragraph 82.

26. United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules') adopted by General Assembly resolution 40/33 of 29 November 1985. See Article 13 for 'Detention pending trial'.

27. Committee on the Rights of the Child, *Consideration of reports submitted by states parties under article 44 of the Convention, Concluding observations: Malaysia*, Section 82 (a), 44th session, 2 February 2007, CRC/C/MYS/CO/1.

28. Committee on the Rights of the Child, *Consideration of reports submitted by states parties under article 44 of the Convention, Concluding observations: Malaysia*, Section 82(e), 44th session, 2 February 2007, CRC/C/MYS/CO/1.

29. Ibid.

30. Ibid.

31. Committee on the Rights of the Child, *Consideration of reports submitted by states parties under article 44 of the Convention, Concluding observations: Malaysia*, Section 82 (a), 44th session, 2 February 2007, CRC/C/MYS/CO/1.

32. See the memorandum, SUARAM, *Detention of asylum seeker children, mothers and pregnant women in violation of international human rights treaties*, Press Statement, 23 November 2006.

33. UNHCR, 'UNHCR staff celebrate release of babies from detention in Malaysia', 23 March 2007, accessed at <http://www.alertnet.org/thenews/newsdesk/UNHCR/45efe1e6ff12b51b551e312a0ae04f27.htm>.

CHAPTER VI - CONDITIONS OF DETENTION, PUNISHMENT AND SANCTIONS

In general, the ex-detainees and NGOs that the mission met with suggested that conditions vary significantly between different immigration depots depending on the particular warden in charge, who has some degree of discretion over budgetary spending.

1. Overcrowded facilities

Former detainees and civil society mentioned in interviews that overcrowding is a problem in the immigration depots, with the number of detainees fluctuating greatly depending on the number of recent RELA or immigration raids and the number of removals carried out. For example, at times just prior to a 'mass' removal and when a RELA raid has just been conducted, it was reported to the mission that apparently the number of detainees at an immigration depot can well exceed capacity. This has been confirmed by direct observers, for example, in its 2005 Annual Report, SUHAKAM acknowledged that 'the issue of space is still a problem, and prisons and certain immigration depots remain overcrowded.'³⁴ Nevertheless, the authorities said that the depots are not overcrowded.

It was not possible to obtain specific data on the number of detainees currently held at the immigration depots, compared with capacity as the Prisons Department declined to meet the mission and did not respond to a detailed written request for statistics and other information relating to detention sent after the mission in March 2007.

The cells are large halls with a concrete floor measuring approximately 30 metres long. These cells often hold 300 up to 400 detainees, all housed in the same cell. Women and men are detained separately. A number of ex-detainees from Lenggeng camp and Semenyih who were detained in 2006 explained to the mission how overcrowding had a direct impact on their life. The number of detainees in the cell would often mean that all detainees could not lie down on the floor at the same time. Thus, detainees take turns to lie flat on the ground, while the others sit on the floor. During the night, from 7pm to 8am the accommodation blocks of Semenyih are closed; in the day, they are only opened out into an approximately three square metre yard around the blocks, separated from other blocks with barbed wire.

Overcrowding in the cells means that detainees lack privacy. With up to 15 nationalities together, the risk of

tensions between detainees of different nationalities is high. A former detainee of Semenyih camp confirms that this is compounded by the fact that there are no outdoor exercises and activities: there is no time allocated for physical exercise and detainees are only able to do physical exercise within their cell. The impossibility for the detainees to exercise is a clear violation of Article 21 of the UN Standard Minimum Rules for the Treatment of Prisoners, which requires, as a minimum, one hour per day of open air exercise and physical and recreational training where appropriate.

2. Breaches of basic standards of hygiene

The overcrowding of the depots and the inadequacy of the facilities provided has consequences on the hygiene of the sanitary facilities in the cells. The mission was told by ex-detainees that toilets were located inside at the corner of the cell with a partial cover around them intended to give an impression of privacy. In some depots, being shared by up to 400 inmates, 4 toilets are reportedly also used as bathrooms. Ex-detainees from Semenyih and Lenggeng told the mission that the toilets are filthy and constantly need to be cleaned. Under section 16 of Immigration Depot Regulations, detainees should be allowed to take a bath at least once daily, in the reality, this is variable and depends on the infrastructure of the depots.

Access to water in the depots is another extremely serious problem. For drinking, each detainee, according to sources, receives one cup or half a bottle of water a day. As there is no running water available within the block, ex-detainees told the mission if they were thirsty they would have no choice but to take it directly from the toilets facilities. This is contrary to the principle in the Standard Minimum Rules for the Treatment of Prisoners (Article 20) : 'Drinking water shall be available to every prisoner whenever he needs it'.

Sanitary pads and soaps are provided to the women but not always in a sufficient quantity. Section 32 of the Immigration (Administration and Management of Immigration Depots) Regulation 2003 forbids the subordinate officers from having financial dealings with detainees, but sanitary pads are nevertheless sometimes sold to the women and this, not always on an equal basis: several women told the mission that whether they received pads depended on the relationship they had with the

women guards. Certain women were consequently denied these products.

The cells are neither heated in the winter nor air-conditioned in the summer. According to information gathered by the mission, in general detainees are not given mats or pillows. In Lenggeng depot, inmates are reportedly provided with one sheet or blanket; however, detainees reportedly do not receive any bedding in Semenyih depot. In most camps, detainees are reportedly allowed to bring in only one set of clothing which they must wash and dry inside the cell. An ex-detainee met by the mission said that she often had her clothes stolen and was forced to pay exorbitant prices to obtain new clothes from the guards.

3. Diet and health care

According to former detainees met by FIDH, people are hungry in the depots and many of them suffer from malnutrition. In violation of the requirements of section 14 of the Immigration (Administration and Management of Immigration Depots) Regulation 2003, from the information gathered by the mission, there is apparently no respect of the nutritional diet scale therein provided in the composition of the two times a day meals distributed to the detainees. It was reported to the mission that for breakfast, detainees are provided slightly sweetened tea and four pieces of biscuit. Meals for lunch and dinner include a fistful of rice and a small piece of salted fish; sometimes one piece is given, sometimes two. No vegetables are given and once a week, a small piece of chicken may be provided. In some centres, eggs are also given to detainees but the general standard of food reportedly remains very poor. Ex-detainees interviewed by the mission said that they often had to bargain with the guards in order to get a larger portion of food. As mentioned above, it is understood that there is no access to running drinking water in the cell and detainees only receive a cup or half a bottle of water per day.

FIDH recalls that the UN Standard Minimum Rules for the Treatment of Prisoners, in Rule 20, provides that every prisoner shall be provided at the usual hours with food of appropriate nutritional value as well as water as needed.

The close proximity of detainees to one another and poor diet often lead to diseases or other illnesses. Apart from depression and other mental health problems, which according to converging and reliable testimonies in some cases have led to suicide attempts by detainees, detainees suffer from skin infections, tuberculosis, kidney problems

and beri-beri, diseases that are either eradicated or hardly exist amongst the Malaysian population and can be directly attributed to the extremely poor conditions of detention that favour the spread of transmissible diseases. Unlike in prisons where detainees have (according to former detainees) to undergo a medical check in order to house separately people who are found carrying communicable disease, people in the depots who have transmittable diseases are not separated from other inmates. During the weekdays, there is a nurse in the immigration depot but this access to health care again largely depends on the management and geographical situation of the camps. According to former detainees, only those who are in a serious or critical condition are generally taken to outside clinics and it has been reported to the mission that sick inmates have died on the way to the clinic or shortly after arrival there. As there is no emergency process for detainees who need urgent care, there were a few cases of deaths in the depots³⁵; it might be expected that some of these deaths might have been avoided had adequate medical care been available in the depot.

Rules 22 to 26 of the UN Standard Minimum Rules for the Treatment of Prisoners detail the international standards concerning medical services in detention facilities. In addition, Principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires the free provision of a proper medical examination as soon as possible after the commencement of detention or imprisonment.

4. Ill-treatment and punishment of detained migrants

A number of individuals met by the mission said that in the depots guards are very often verbally abusive towards detainees, shouting insults at them and treating them as inferior. A number of ex-detainees either personally experienced or witnessed physical abuse. For example, detainees have reported being kicked by guards, beaten or whipped. SUHAKAM confirmed during its interview with the mission that some complaints of this nature were now under examination. One woman the mission met reported being subjected to sexual harassment perpetrated by women officers in the depots.

Several female ex-detainees said that they were forced to sit for four to six hours at a time cross-legged, resulting in permanent scars on their legs which were seen by the members of the mission, and in circulation problems.

5. Immigration depots failing to meet international standards and lack of effective redress

Inadequate resources combined with overcrowding, breaches of basic standards of hygiene, poor diet and lack of access to health care, mistreatment of detainees and a failure to adequately protect women and children in the Malaysian immigration depots mean that conditions of detention fail to meet the standards set down in CEDAW, CRC and in a range of widely accepted international human rights standards. The Immigration Depot Regulations do provide for a complaints mechanism, through direct complaints to the Board of Visitors. The mission was unable to obtain any information on the Boards of Visitors, in particular whether they exist or are active. However, former detainees reported that whether they use this mechanism or an internal depot complaints mechanism, their complaints usually went unaddressed. In addition, few complaints are made as those making a complaint fear being beaten and abused by guards.

Detainees can also lodge a complaint to SUHAKAM (Human Rights Commission of Malaysia Act 1999, paragraph 4(1)(d) and Act 597, paragraph 4(1)(d)) and to the Committee on Detention of SUHAKAM mentioned above; however in the meeting with SUHAKAM, it was not clear what concrete follow up steps are or can be taken if the complaint is assessed to be well-founded, other than sending letters to the relevant authorities. It also appears that the complaint mechanisms are not easily accessible to detainees, and that indeed they may not even know it exists. It may also be problematic to judicially review the conditions of detention, as a court may consider itself bound by the ouster clause in section 59A of the Act (see above). Even if avenues for legal redress were available, the indigent state of many migrants and refugees would likely place a practical bar on legal action.

Conditions of detention are compounded by the weakness of mechanisms to legally challenge detention conditions, and last but not least, the limitations on access to the depots that permits immigration detention to operate virtually out of view of the outside world.

6. Punishment

After their removal, undocumented migrants often come back to Malaysia, where they will be subject to section 36 of the Act: If apprehended again by immigration

enforcement officers, they will be liable to a fine not exceeding ten thousand ringgit, to imprisonment for a term not exceeding five years or to both, but also, to whipping of not more than six strokes.

Punishments for infringing the Immigration Act 1959/63 (Act 155) most often involve a pecuniary fine and/or a term of imprisonment not exceeding five years. Offences concerning entry without valid permits or passes and forgery or falsification of documents may also incur whipping of up to six strokes.

Corporal punishment for offences also exist that are aimed at discouraging persons from transporting (section 55A), employing (section 55B), otherwise permitting illegal immigrants to enter or remain at premises (section 55E) and harbouring persons who are believed to have acted in contravention of the Act (subsection 56(1)(d)). Various penalties apply to these offences, in particular, the penalty of whipping is available for conveying a person into Malaysia contrary to the Act (subsections 55A(1), (3) and (4)) (for this offence, it is a mandatory penalty) for employing five or more persons not in possession of a valid Pass (subsection 55B(3)) and harbouring (paragraph 56(1)(bb)).

Whipping causes physical pain and mental suffering and has been already widely denounced by local human rights defenders as a cruel and inhuman treatment, contrary to human dignity. In its *General Comment* No 20, the Human Rights Committee stated that ‘the prohibition [in article 7 of the *International Covenant on Civil and Political Rights*] must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.’³⁶ Even if Malaysia is not a party to the ICCPR, this statement on corporal punishment of the Human Rights Committee should be taken into account by authorities because it reflects the current status of international human rights law on this issue.

FIDH recalls that corporal punishment clearly violates international human rights standards. The UN Special Rapporteur On Torture considers that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the *Universal Declaration of Human Rights*, the *ICCPR*, the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.³⁷ In his general

recommendations, the Special Rapporteur stated 'legislation providing for corporal punishment, including excessive chastisement ordered as a punishment for a crime or disciplinary punishment, should be abolished'.³⁸

As regards prison sentences, Malaysia should amend its legislation with a view to avoiding that violations of provisions relating to migration are treated in the criminal justice system.³⁹

7. Improving conditions of detention

SUHAKAM, the only entity with a legal mandate to access to the whole area inside the immigration depots, has a number of priorities for human rights in Malaysia that stretch its resources, but FIDH encourages it to continue its excellent work on the issue of detention that started with the 2003 report of the Complaints and Inquiries Working Group and to continue to encourage Malaysia to meet international human rights standards.

Beyond the national human rights institution, it is well known that inspections by an independent international authority, whose visits are unannounced⁴⁰ can effectively contribute to the prevention of ill-treatment of detainees. By ratifying the *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* and the *Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, Malaysia would be internationally supported in the monitoring of its detention places and benefit from the advice of leading international experts on detention.

Another monitoring mechanism which is foreseen by the Immigration Depot Regulations but seems to be yet to be implemented is the mechanism of the Board of Visitors. Regulation 4 empowers the Minister to appoint a Board of Visitors for one or more immigration depots. Paragraph 5(1)(a) empowers the Board of Visitors to 'ensure that the health, maintenance, welfare and discipline of detainees are satisfactory and that reasonable standards are maintained at each immigration depots'.⁴¹ As described in paragraph 5(1)(a), this board would be able to hear the complaints of detainees and would be responsible for the formulation of recommendations to the officer-in-charge of the depots.⁴² FIDH encourages the establishment of Boards of Visitors, as a means to improve detention conditions and encourage a consistent approach to the management of immigration depots across all depots.

The media do not frequently report on issues relating to detention conditions. News outlets such as Malaysiakini have recently published material on this issue, but beyond that, the public is generally unaware of the full extent of the issue, and to the extent that they are aware of it, it appears to be generally accepted as a status quo. As discussed above, NGOs have reducing access to places of detention, which is of serious concern.

There appears to be an entrenched view of the authorities that detention should be punitive and carried out without meaningful independent supervision or monitoring, which is of serious concern for the protection of human rights of undocumented migrants and refugees in Malaysia.

8. Speaking out about violations of migrants' human rights

Due to the conditions in immigration detention depots and in spite of a range of constraints, local NGOs, various individuals and SUHAKAM have attempted to raise public awareness about the issue for at least the past 12 years. The Malaysian authorities' response to a number of reports denouncing the conditions of detention has been disappointing. Steps that could have been easily taken to improve the detention conditions of undocumented migrants have not been taken and the attitude of the authorities the mission met with suggests that these conditions are unlikely to be improved in the short term.

In August 1995, this issue was brought to light by Dr. Irene Fernandez, Director of the well-known Malaysian migrant workers organisation Tenaganita, after the organisation carried out 300 interviews with former detainees from immigration depots Semenyih, Juru, Kelantan, Johor and Malacca. In the 'Memorandum on Abuse, Torture and Dehumanised Treatment of Migrant Workers at Detention Camps', she denounced the mistreatment of migrants in the depots, and the inhumane conditions in which they were detained. After the publication of the Memorandum, Irene Fernandez was arrested on charges of 'maliciously publishing false news' under section 8A(2) of the Printing Presses and Publications Act 1984. Seven years later and, in the opinion of international observers,⁴³ after an unfair trial, she was found guilty and sentenced to 12 months imprisonment. It was alleged that she had failed to make adequate efforts to verify the truth on the statement made in the Memorandum.

As Commissioner and member of the Complaints and Inquiries Working Group of SUHAKAM, Professor Dato'

Haji Mohd Hamdan Adnan led visits to seven immigration depots in August 2003, under the statutory power of SUHAKAM. The purpose of these visits⁴⁴ were to determine the exact numbers of persons held in the detention centres, to determine the reasons for the coming of the undocumented migrants to Malaysia and at least, to determine whether the conditions of detention complied with the minimum standards set out in international instruments. The media statement of SUHAKAM on the resulting report mentioned a range of issues including overcrowding, the detention of children, the deplorable conditions of the centres, the mistreatment of detainees and delays in repatriation.⁴⁵ This research, elaborated by an independent body established by the government, evidenced the seriousness of these issues. This report was not formally published. At the time of its informal release, it caused quite a serious controversy, but still no lasting changes, although according to local actors met by the mission, conditions are considered to have improved slightly in recent years.

34. SUHAKAM, Human Rights Commission of Malaysia, *2005 Annual Report*, p. 70.

35. As an example, the following Chin refugees died in detention camps in Malaysia: Mr. Thawng Hu died in July 2007, Mr. Japhet died in September 2005 at Lenggeng immigration camp, Mr. Aung Lwin died in 2003 at Langkap camp (Perak), Mr. Ni Cung died in Lenggeng camp in October 2002, Mr. Mual Ceu died in February 2002.

36. Human Rights Committee, *General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, Forty fourth session (1992), section 5.

37. Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1997/7, 10 January 1997.

38. General Recommendations of the UN Special Rapporteur on Torture, paragraph C, accessed at <http://www.ohchr.org/english/issues/torture/rapporteur/index.htm>. See also E/CN.4/2003/68, para. 26.

39. See Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Seventh session, Geneva, 26 – 30 November 2007, Concluding Observations on Ecuador, para. 27.

40. See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *CPT standards, 'Substantive' sections of the CPT's General Reports (CPT)*, CPT/Inf/E (2002) 1 - Rev. 2004, Strasbourg, 2004, p. 16, §50.

41. Immigration (Administration and Management of Immigration Depots) Regulation 2003, Section 5 (1) a.

42. Cf. Immigration (Administration and Management of Immigration Depots) Regulation 2003, Section 5 (1) b, c.

43. Amnesty International, 'Malaysia, Irene Fernandez defends rights of migrant workers despite conviction', 9 December 2004, accessed at : <http://web.amnesty.org/library/index/engasa280152004>; see also 2006 annual report of the Observatory for the Protection of Human Rights Defenders at: http://www.fidh.org/article.php3?id_article=4108

44. SUHAKAM, Human Rights Commission of Malaysia, Media Statement : 'Prisons Department Should Take Over Management of More Immigrations Depots' in Annual report 2003, Appendix V, p. 148.

45. Malaysiakini, "Suhakam: Conditions in immigration holding pens less than 'decent'", 22 September 2003.

RECOMMENDATIONS

As a result of the mission conducted, FIDH recommends:

To the government of Malaysia

Refugees

1. To urgently reconsider its current position on the ratification of the Refugee Convention and acknowledge the need for states to co-operate and contribute to the alleviation of human suffering caused by refugee producing situations and the plight of those currently in Malaysia that have a well-founded fear of persecution on Convention grounds and move to ratify the Convention and implement its provisions in domestic law.
2. Meanwhile, amend the Immigration Act or enact separate legislation to legalise the status of refugees and asylum seekers in Malaysia.
3. To, in the meantime, exercise the discretion provided for in Section 55 of the Immigration Act, through issuing either individual or categories of IMM 13 visas, to ensure that persons with recognised international status as refugees or persons of concern or other individuals in need of humanitarian assistance are given the protection and status they require.
4. To urgently guarantee the recognition and respect of UNHCR POC letters and Refugee Protection Cards by ensuring that the authorities do not arrest, charge, prosecute nor mistreat holders of these documents and contact the UNHCR immediately if a person holding such documents is arrested or otherwise held, and where possible, release the person to the UNHCR.
5. To guarantee the rights of children refugees or asylum seeking children as set out in Articles 3 and 22 of the *Convention on the Rights of the Child* and paragraph 82 of the concluding observations of the of the Committee on the Rights of the Child in its 44th Session on 2 February 2007.
6. To adopt a gender-sensitive approach throughout the process of granting asylum and refugee status, in cooperation with appropriate international agencies in the field of refugee protection, in particular the UNHCR, as recommended in paragraph 28 of the Concluding Comments of the Committee on Elimination of Discrimination against Women in March 2006.
7. To establish additional screening mechanisms so refugees or asylum seekers are quickly identified and protected from arrest.
8. If refugees or asylum seekers are detained, that they be held separately from other detainees and provided the assistance and protection they require.
9. Where possible, enable recognised refugees and asylum seekers to work and access health care and education until such time as their future is determined, eg. status determination, resettlement or IMM 13 visa.
10. To provide the necessary consent and approvals for the UNHCR to operate freely within Malaysia and carry out its activities without hindrance.
11. To co-operate with and provide the highest possible level of access to the UNHCR to detainees in immigration depots or elsewhere for the purposes of determining their refugee status, providing protection and other assistance and arranging for repatriation or resettlement.

12. To cooperate with and provide access by NGOs to immigrants and refugees detained in immigration depots or elsewhere.

13. To ensure that it does not breach the customary international law principle of non-refoulement.

General law and policy

14. To publish a clearly stated written immigration policy, including annual quotas for different categories of migrants, and to elaborate detailed plans for population growth and the requirements of the labour market.

15. To review, rationalise and co-ordinate the various activities of government departments relating to immigration law and enforcement, employment law and human resources, criminal law and enforcement, and detention and prisons.

16. To amend the Immigration Act to:

a. reduce the number and complexity of offences relating to entering or remaining in Malaysia without appropriate authorisation, by 'decriminalising' such acts and providing only for administrative recourse;

b. alternatively and as a minimum, remove provisions allowing for a sentence of whipping for immigration offences (as corporal punishment is prohibited under international human rights law) and reduce the maximum term of imprisonment provided for these offences;

c. limit the power to detain by placing clear time limits on any period of detention and permitting periodic judicial supervision ;

d. reduce the period of detention before which a person must be brought before a judge from 14 days to a maximum of 24 hours, or less;

e. remove the ouster clause in section 59A to permit detainees to challenge the grounds for their detention and removal and other reviewable decisions under the Act;

f. make it a specific offence to remove a person from Malaysia whilst proceedings are on foot regarding his or her status;

g. make it a specific offence to procure or enter into a contract with a person to bring that person to Malaysia for the purposes of illegal work, or a similar provision to ensure unscrupulous agents cannot use deception to employ overseas workers;

h. provide a statutory defence for persons who are charged for immigration offences after they have lost their status or never obtained appropriate status due to the conduct of their employers;

i. protect the special position of women and children as recognised by Malaysia in its ratification of the *Convention on the Rights of the Child* and the *Convention on the Elimination of All Forms of Discrimination against Women*;

17. To enact the *Anti-Trafficking in Persons Bill 2007*, tabled in Parliament on 24 April 2007.

18. To withdraw its reservations to the *Convention on the Rights of the Child*, particularly those reservations to Articles 2, 7, 28 and 37, due to their incompatibility with the object and purpose of the Convention.

19. To withdraw its reservations to the *Convention on the Elimination of All Forms of Discrimination against Women*,

particularly those reservations to Articles 2(f), 2 (f), 5 (a) and 7 (b), 9 (1), 16 (b), (d), (e) and (h), due to their incompatibility with the object and purpose of the Convention.

20. To otherwise fully implement the provisions of the *Convention on the Rights of the Child* and *Convention on the Elimination of All Forms of Discrimination against Women* and to fully implement the concluding observations of the Committee on the Rights of the Child of February 2007 and the concluding comments of the Committee on Elimination of Discrimination against Women of March 2006 in relation to women and children who are undocumented migrants or refugees.

21. In particular, to ensure the access to education of children of migrants and refugees, whatever their current status, in accordance with Articles 2, 22 and 28 of the *Convention on the Rights of the Child* and Article 10 of the *Convention on the Elimination of All Forms of Discrimination against Women*.

22. In particular, for humanitarian reasons, to allow access to free or low cost health care for undocumented migrants and refugees on the same basis as health care provided to Malaysian citizens (as also required by Article 24 of the *Convention on the Rights of the Child* and Article 12 of the *Convention on the Elimination of All Forms of Discrimination against Women*).

23. To ensure the provision of the required 'health checks' for documented migrants without charge or for a nominal fee to the individual.

24. To take all steps required to implement the *Bangkok Declaration on Irregular Migration of 1999* and the *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers* of 13 January 2007.

25. To urgently consider the ratification of the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *Optional Protocol to the Convention on the Elimination of Discrimination against Women* for the benefit of both Malaysia citizens and other persons within its jurisdiction.

26. To address a standing invitation to the UN Special procedures on human rights.

Employment of migrant workers

27. To conclude appropriate Memoranda of Understanding with other relevant countries providing migrant workers to ensure minimum rates of pay and conditions, and also bind private employers to maintain those conditions in their contracting and employment of migrant workers.

28. To implement measures to properly regulate the activities of employment agents in Malaysia and Malaysian registered companies operating overseas through the establishment of a regulated licensing system, and possibly also licensing employers to accept foreign workers, alternatively, conduct recruitment on a government to government basis.

29. To issue visas, Permits and Passes only to the named individual, rather than an employer or agent.

30. To improve co-ordination between the Department of Human Resources and the Immigration Department regarding the recording of and administration of the issuance of work permits, in particular, to ensure those with relevant Permits or Passes are not arrested because they cannot produce a copy of their Permit or Pass and to ensure that the documents can be quickly checked for the purposes of court hearings.

31. To ensure the prosecution of employers under paragraph 12(1)(f) of the Passports Act who retain the passports or other travel documents of migrant workers where the worker has requested the return of the documents.
32. To provide adequate legal aid to individual migrant workers who wish to claim unpaid salaries or improper deductions or otherwise enforce their rights under employment law.
33. To ensure the prosecution of those who recruit or employ migrants without adequate work authorisations, eg. by changing the place or type of work or by entirely failing to obtain appropriate authorisations and to provide immunity from prosecution or provide a statutory defence (as recommended above) for affected migrant workers.
34. To provide temporary status without a visa charge to migrants who have been improperly dismissed and are currently taking their case to the Labour Court or any other body or court, employed without proper authorisations or subjected to physical abuse, allowing a reasonable period of time to find alternative employment, and providing support to enable them to find such employment.
35. To make special provision for the position of women migrant domestic workers, particularly with regard to protections against abuse and temporary status during legal proceedings, as recommended by paragraph 26 of the Concluding Comments of the Committee on Elimination of Discrimination against Women in its 35th Session on 31 March 2006.
36. To allow migrant workers to associate freely, in conformity with international human rights standards on freedom of association.

Enforcement of immigration law

37. To immediately cease the use of RELA officers in the enforcement of immigration law through repeal or amendment of the *Essential (Ikatan RELAWan Rakyat) (Amendment) Regulations 2005* and any other relevant empowering legislation.
38. To initiate proceedings or support the initiation of criminal and civil proceedings against individual RELA officers and their superiors whose acts have caused injury or loss to migrants or refugees, and if such action is prevented by the application of the *Public Authorities Protection Act 1948*, repeal that Act or any other relevant legislation to the extent that it applies to acts of RELA.
39. If RELA officers are to remain involved in immigration enforcement, to ensure as a minimum the 'professionalisation' of RELA through the provision of adequate training, strict control, command and accountability structures, procedures for the determination of responsibility for any wrongdoing and improved co-ordination with police and immigration officers.
40. To fully implement the recommendations of the *Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police*, in particular, the establishment of an Independent Police Complaints and Misconduct Commission and the improvement of detention conditions in police lock-ups.
41. To continue efforts aimed at the eradication of corruption and abuse of power by police officers, in particular, extortion and theft from migrants and refugees and use of physical violence.
42. To ensure that proceedings for offences against the Immigration Act comply with internationally recognised standards for the administration of justice and fair trial and Article 40 of the *Convention on the Rights of Child*, in particular, by guaranteeing an impartial tribunal, the right to silence, interpretation where required and the right to an appeal.

43. In particular, to ensure that fair trial standards are maintained in hearings before the Special Courts.

Detention and imprisonment in lock-ups, prisons and immigration depots

44. To improve conditions of detention in police lock-ups, prisons and, in particular, immigration depots, to ensure that conditions of detention do not constitute cruel, inhuman or degrading treatment or punishment and that detention is used only for the absolute minimum period of time required to determine status and/or effect removal such that it is not arbitrary in nature.

45. To clarify the appropriate use of the remand order power in section 117 of the Criminal Procedure Code by providing that it only be used once and only when certain conditions are established, ie to ensure that law enforcement authorities promptly investigate matters.

46. To ensure that the relevant embassy is informed of the detention of its nationals and can access them whilst in detention and the detainee is informed of his or her rights in accordance with the Vienna Convention on Consular Relations.

47. To permit adequate and reasonably frequent access by legal representatives, family members and other persons designated by the detainee to the detainee during detention.

48. In accordance with the *Concluding Observations of the UN Committee on the Rights of the Child* of February 2007, not to detain children in connection with immigration proceedings, unless it is necessary to protect their best interests and for the shortest time possible.

49. To release pregnant or nursing women and children from detention;

50. More generally, in relation to immigration depots, in order to ensure compliance with accepted international standards (in particular the UN Standard Minimum Rules for the Treatment of Prisoners of 1977):

- a. prevent overcrowding in immigration depots, so as to ensure that each detainee has an adequate minimum cells space;
- b. ensure that cells are clean, secure and sheltered from the elements;
- c. ensure that adequate shower and toilet facilities and clothes washing facilities are available to ensure that adequate hygiene is maintained;
- d. ensure adequate time and space for detainees to exercise outside the cell;
- e. ensure that adequate water and nutritious and culturally appropriate food is provided to detainees;
- f. ensure that detainees are given adequate clothing and bedding;
- g. ensure that appropriate measures are taken to provide suitable conditions for children, menstruating women, pregnant women and new mothers;
- h. prevent physical violence, sexual abuse and verbal abuse of detainees by depot guards;
- i. ensure the provision of adequate health care (both mental and physical) in each immigration depot by qualified doctors and the provision of sick bay and isolation areas;

- j. ensure there are activities for detainees, particularly for children (bearing in mind that detention of children in connection with immigration proceedings should be totally exceptional);
- k. ensure that depot guards are given adequate basic and ongoing training in relevant domestic law, international human rights law and international law relating to detention;
- l. amend regulations 20 and 21 of the the *Immigration (Administration and Management of Immigration Depots) Regulations 2003* so as to only include serious offences against the security and safety of the immigration depot and to remove the punishment of confinement in a punishment cell on a restricted diet;
- m. ensure that adequate disciplinary procedures are established within the depots for complaints against and discipline of depot guards;
- n. establish robust monitoring mechanisms for immigration depots.

51. To facilitate access by international and local non-governmental organisations to places of detention.

Removal

52. To ensure the safe passage of removed persons out of Malaysia, taking all possible precautions and measures to prevent access by agents to detainees and the consequent process of extortion, trafficking and smuggling.

53. To prosecute persons involved in unlawfully imprisoning individuals liable to be removed from Malaysia and extorting money from them, smuggling them from the Thai border area for fee or otherwise forcing them to engage in labour in Malaysia or elsewhere.

54. To establish networks for co-ordination with embassies of other countries to ensure the timely identification and where relevant, the return, of its nationals and/or reception of nationals of other countries.

To ASEAN

55. To encourage ASEAN states to ratify the Refugee Convention and undertake co-ordinated steps to share the refugee burden in the region.

56. To encourage ASEAN states to fully implement the ASEAN Declaration on the *Protection and Promotion of the Rights of Migrant Workers* of 13 January 2007.

57. To continue regional efforts to prevent the trafficking of humans, particularly of women and children and to formulate regional solutions to tackle this problem.

To the European Union

58. In all consultations and other discussions with Malaysia, to raise the issue of the treatment of migrants and refugees, the ratification of the Refugee Convention and immigration detention.

59. Raise as well the issue of whipping under the EU Guidelines on Torture of 9 April 2001.

APPENDIX 1: LIST OF PERSONS MET BY THE MISSION

A number of persons and organisations have been purposely omitted in the present list of persons met by the mission for security purposes.

Authorities

- Dat' Ishak Bin Hj. Mohamad Director General of Immigration, in the Immigration Department, which is a unit of the Home Affairs Ministry.

- SUHAKAM, the National Human Rights Commission
Dr Chiam Heng Keng, Commissioner
Datin Paduka Zaitoon Dato Othman, Commissioner
Mr Amir Saravanan Abdullah, Head of Policy and Research
Ms Khoo Ying Hooi, Officer, Policy and Research

- Members of the police at Bukit Aman Headquarters
- Professor Dato' Haji Mohd Hamdan Adnan, former SUHAKAM's Commissioner and member of the Complaints and Inquiries Working Group of SUHAKAM,

Communities

- Burmese community (Kachin, Chan, Corani, Chins, Arakan, Mon, Karen)
- Rohingyas
- Acehnese
- Nepali

NGOs

- CARAM ASIA
- Labour Ressource Center (LRC)
- Malaysian Trades Union Congress (MTUC)
- Shelter
- Suaram
- Tenaganita, migrant worker's organisation
- Woman Aids Organisation (WAO)

International Organisations

- UNHCR

Journalists

- Jonathan Kent, journalist at the 'BBC'
- Steven Gan, Editor of Internet Newspaper 'Malaysiakini'

fidh

Fédération Internationale des Ligues des Droits de l'Homme
International Federation for Human Rights
Federación Internacional de Derechos Humanos
الفدرالية الدولية لحقوق الانسان

17 passage de la Main-d'Or - 75011 Paris - France

Tél. : (33-1) 43 55 25 18 / Fax : (33-1) 43 55 18 80

Email: fidh@fidh.org

Web site: <http://www.fidh.org>

The International Federation for Human Rights (FIDH) is an international non-governmental organisation for the defence of human rights as enshrined in the Universal Declaration of Human Rights of 1948. Created in 1922, FIDH brings together 155 human rights organisations from 100 countries. FIDH has undertaken over a thousand missions of investigation, trial observations, and trainings in more than one hundred countries. It provides its members with an unparalleled network of expertise and solidarity, as well as guidance to the procedures of international organisations. FIDH works to:

- Mobilise the international community
- Prevent violations, and support civil society
- Observe and alert
- Inform, denounce, and protect

FIDH is historically the first international human rights organisation with a universal mandate to defend all human rights.



Kuala Lumpur office

433-A, Jalan 5/46

46000 Petaling Jaya

Selangor, Malaysia

Telephone: +60 3 7784 3525 / Fax: +60 3 7784 3526

Email: suaram@suaram.net

Suara Rakyat Malaysia (SUARAM) is a non-governmental Malaysian human rights organisation working for a free, equal, just and sustainable society. SUARAM works for the respect of civil liberties that are enshrined in the Malaysian Human Rights Charter and the Universal Declaration of Human Rights to enable peoples' participation and the fruition of a civil society in Malaysia.

SUARAM has established itself in the last 18 years as the major human rights centre and a leading rights activist organisation in Malaysia.

SUARAM has:

- Monitored, documented, exposed and fought against violations of human rights, in particular, civil and political rights.
- Articulated and advocated for human rights in Malaysia.
- Maintained a strong political presence in the country through its advocacy and lobby work such as in the setting up of the National Human Rights Commission.
- Lobbied internationally such as during UN Human Rights Council, APEC and ASEAN ministerial meetings.
- Organised regional human rights fora in Malaysia such as the 2nd Asia-Pacific Conference on East Timor and the Asia-Pacific Peoples' Assembly.
- Spearheaded human rights campaigns such as the Abolish-ISA Campaign which is now a popular demand of Malaysians.

FIDH Director of publication: Souhayr Belhassen - **Editors:** Antoine Bernard

Authors: Pranom Somwong and Marie Huberlant - **Coordination:** Swee Seng Yap, Will Fitzgibbon and Isabelle Brachet

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