

MALAYSIA

A joint submission by members of the Migration Working Group (MWG) for the 17th Session of the Universal Periodic Review, 24 October 2013

Background

1. Members of the Migration Working Group (MWG)¹ wish to draw attention to the human rights violations and discrimination faced by non-citizens in Malaysia, in particular migrant workers, asylum seekers, refugees, stateless persons, and the foreign spouses of Malaysian citizens.
2. There are an estimated 1.9 million authorised migrant workers² in Malaysia. There are an additional 2.2 million migrants with irregular status³, some of whom entered Malaysia legally but became undocumented for various reasons. Of these, there are an estimated 250,000 authorised foreign domestic workers and around 100,000 foreign domestic workers with irregular status.⁴
3. The government accords different rights to ‘highly skilled’ migrant workers, referred to as ‘expatriates’, and those it considers to be ‘unskilled’ or ‘semi-skilled’, officially called ‘foreign workers’.
4. Malaysia criminalises irregular entry and stay in Malaysia under its Immigration Act (1959/63), subjecting all those arrested on these grounds to mandatory detention and imposing harsh sentences on those convicted, including whipping, which constitutes torture. These individuals are held in detention depots indefinitely while awaiting deportation to their countries of origin.⁵
5. In 2011, the government launched a regularisation programme nicknamed ‘6P’, through which it registered a total of 2,320,034 individuals, of which 1,303,126 had irregular status.⁶ Of these, 62,156 were children, 40,500 aged 12 and below, and 21,656 between 13-18 years old.⁷ However, these numbers do not reflect the

¹ The 10 organisations making this joint submission are: Building and Woodworkers’ International Asia Pacific, Coalition to Abolish Modern-day Slavery in Asia (CAMSA), Health Equity Initiatives (HEI), Humana Child Aid Society, Malaysia Social Research Institute (MSRI), Malaysian Trades Union Congress (MTUC), Suara Rakyat Malaysia (SUARAM), Tenaganita (Women’s Force), Women’s Aid Organisation (WAO), and Pusat Kebajikan Good Shepherd (PKGS).

² The Malaysian Insider (2010) Foreign Worker Levy Hike in 2011, available at <http://www.themalaysianinsider.com/malaysia/article/foreign-worker-levy-hike-in-2011/>, accessed 11 March 2013.

³ Amnesty International interview with Dato’ Abdul Rahman Othman, Director General of Immigration, Putrajaya, 24 July 2009, quoted in Amnesty International, “Trapped: The Exploitation of Migrant Workers in Malaysia”, ASA 28/002/2010, March 2010, pages 3 and 9, available at <http://www.amnesty.org/en/library/info/ASA28/002/2010>, accessed 11 March 2013.

⁴ United States Department of State (2012) Trafficking in Persons Report - Malaysia, p. 235, available at <http://www.state.gov/documents/organization/192596.pdf>, accessed 11 March 2013.

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

⁶ The Star / Asia News Network (2011) 2.3 million foreign workers registered under 6P, available at <http://www.asiaone.com/News/AsiaOne%2BNews/Malaysia/Story/A1Story20110906-297915.html>, accessed 6 March 2013.

⁷ Annuar A (2011) 62,156 Children, Teens Registered under 6P Programme, 12 September, The Sun Daily, available on

total number of migrant workers, asylum seekers, refugees, and stateless persons in Malaysia, either because they did not come forward to register themselves or they were not included under the biometric registration system as they were refugees.

Equality and non-discrimination

6. The Federal Constitution provides children of Malaysian fathers born abroad are entitled to citizenship by operation of law (Article 1(1d), Part I, Second Schedule). However, this does not apply to the children of Malaysia mothers born abroad. We commend the government for promising to provide citizenship to such children by registration as a matter of policy⁸, but urge it to amend the Federal Constitution so that children of Malaysian mothers born abroad will also be entitled to citizenship by operation of law.
7. We commend the government's decision to include authorised migrant workers in the implementation of the minimum wage on 1 January 2013, of MYR900 (USD290) in Peninsular Malaysia and MYR800 (USD258) in Sabah, Sarawak and the federal territory of Labuan. However, we are concerned about the government's recent decision to make authorised migrant workers – rather than employers – pay the expensive government-imposed 'foreign levy' (an annual tax) through wage deductions, which breaches the concept of a 'basic wage' as well as the principle of equality.⁹
8. There are an estimated 88,000 foreign spouses of Malaysian citizens living in Malaysia on temporary Social Visit Passes.¹⁰ Foreign spouses face significant difficulties obtaining permanent residence status and citizenship as well as permission to work, and, as a consequence, suffer great uncertainty and stress for protracted periods of time. Foreign spouses are issued Social Visit Passes, and are only eligible to apply for permanent residence status after five years. Foreign spouses have waited indefinitely for decisions on permanent residence applications, in some cases, for decades.
9. The Federal Constitution provides women foreign spouses with the right to citizenship by registration with the fulfilment of certain criteria, including two years of residency as a permanent resident (Article 15 (1, 5)). However, male foreign spouses can only apply for citizenship by naturalization, the latter granted at the discretion of the Malaysian government. To qualify, male foreign spouses

http://www.malaysianbar.org.my/legal/general_news/62156_children_teens_registered_under_6p_programme.html, accessed 11 March 2013.

⁸ The Star Online (2010) Malaysian women can register children born abroad, available at <http://thestar.com.my/news/story.asp?sec=nation&file=/2010/4/12/nation/6037265>, accessed 11 March 2013.

⁹ Joint Statement by 75 organisations: Minimum Wages for All Workers, including Migrant Workers: No to Wage Deduction to recover levy payable by employers, available at <http://networkofactionformigrantsnamn.blogspot.co.uk/2013/02/75-groups-no-to-wage-deduction-to.html>, accessed 6 March 2013.

¹⁰ Immigration Department Malaysia. 2010. "Statistics of Long-term Social Visit for Spouses." *Immigration Department Malaysia*. Available at <http://www.imi.gov.my/index.php/en/component/content/article/49-statistik-imigresen/362-pls>, accessed 4 February 2010.

must demonstrate residency of not less than ten years in the twelve years preceding the date of application (Article 19 (3)) – a much longer residency requirement.

10. Women foreign spouses on Social Visit Passes are only allowed to work with the written permission of their Malaysian spouse and official approval from the Immigration Department. Thus, their autonomy and participation in the economy is dependent on the goodwill of their Malaysian husbands. This requirement is not imposed on foreign spouses who are men.
11. While the Immigration Department allows women foreign spouses in distress (abused, divorced or widowed) to apply for Social Visit Passes with the support of a Malaysia sponsor with an income of at least MYR2,000 (USD644), this pass does not confer the holder with the right to work. Also, this pass is only granted for six months at a time on a case-to-case basis. This results in such spouses being dependent on the goodwill of a Malaysian citizen for their right to reside in Malaysia. Furthermore, this provision does not apply to men foreign spouses in similar circumstances, who would be forced to leave Malaysia. Women foreign spouses in violent relationships are not able to stay in Malaysia when they seek remedy for domestic violence; they tend to lose custody of their children and are often forced to return to their country of origin.

Right to life, liberty and security of the person

12. Malaysia attempts to reduce the number of irregular migrants in its territory through large-scale ‘crackdowns’ aimed at arresting, punishing, and deporting irregular migrants.
13. Non-citizens with irregular status are punished harshly, including with whipping (or caning), which constitutes torture. Under the Immigration Act 1959/63, any person entering the country without valid documents is guilty of an immigration offence, punishable by a fine not exceeding 10,000 Malaysian Ringgit and/or imprisonment of up to five years, and shall also be liable to whipping of not more than six strokes (Section 6(3)). In June 2009, the government revealed that it had sentenced 47,914 migrants to be caned for immigration offences since this method of punishment was introduced in 2002, and that 34,923 migrants had been caned between 2002 and 2008.¹¹ The European Parliament has denounced Malaysia’s practice of caning, recognizing it as “a practice that amounts to torture and is clearly illegal under international law”.¹²
14. As the government neither registers nor conducts refugee status determination for refugees, UNHCR conducts these activities, issuing refugee cards to those it formally recognises as refugees.

¹¹ US Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Country Reports on Human Rights Practices Report: Malaysia, April 8, 2011, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154391.htm>, accessed on 11 March 2013.

¹² European Parliament (2010) Malaysia: the practice of caning, European Parliament resolution of 16 December 2010 on Malaysia: the practice of caning, P7_TA-PROV(2010)049, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0494+0+DOC+XML+V0//EN>, accessed 11 March 2013.

15. We welcome the better recognition of UNHCR refugee-status cards by Immigration officials and the Police, however we are concerned over the continuous arrests and prolonged detention of refugees until UNHCR is able to secure their release. We are also concerned about the protection of refugees who have not been formally recognised as refugees by UNHCR, which number into the thousands. They, and asylum seekers awaiting refugee-status determination decisions, are vulnerable to arrest, detention, punishment for immigration offences, and deportation, which may result in *refoulement*. UNHCR does not have the capacity to intervene in such cases, and these individuals are punished as irregular migrants.
16. We welcome the High Court decision in *Tun Naing Oo v PP* [2009] 6 CLJ 490 to set aside a sentence of whipping for an asylum seeker from Burma convicted for irregular entry under 6(1)(c) of the Immigration Act 1959/63. The judge stated in writing: ...it is inhumane and serves no purpose to impose the sentence of whipping upon an asylum-seeker or refugee. If asylum seekers or refugees: (a) have not committed acts of violence or brutality; (b) are not habitual offenders; or (c) have not threatened public order, they should not be punished with whipping (p. 491). We urge the Attorney General's Chambers to publicize this decision as guidance for all judges hearing similar cases.
17. Non-citizens charged with and/or convicted of immigration offences are detained together with criminal offenders.
18. Arrangements for deportations are often lengthy, and result in the indefinite detention of an individual. While Section 35 of the Immigration Act 1959/63 allows for a person to be detained for a period "not exceeding thirty days pending a decision as to whether an order for his removal should be made", in practice, non-citizens spend much longer periods of time awaiting removal. As the UN Working Group on Arbitrary Detention observes: "Once detainees have served their prison sentences for their illegal presence on Malaysian territory, they are held in detention centres for an indefinite period while awaiting deportation to their countries of origin."¹³
19. The government continues to detain vulnerable groups of non-citizens in immigration detention depots, such as children (including unaccompanied minors), pregnant and lactating women, the elderly, and individuals with mental illness and with disabilities. The UN Working Group on Arbitrary Detention has expressed concern over Malaysia's regime of mandatory administrative detention. They note that conditions in immigration detention depots are poor, with overcrowding, insufficient access to water, poor sanitation, and inadequate medical care, as well as cases of deaths in detention.¹⁴ In May 2010, for example, Ahmad Qanbar Ali, a refugee, died while in detention owing to inadequate provision of crucial medical care.

¹³ General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2, para 43.

¹⁴ General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2, para 81.

20. Although the Immigration (Administration and Management of Immigration Depots) Regulations 2003 provide that a child under the age of 12 may remain with any of his/her parents (Regulation 11), there are no provisions for the protection of unaccompanied children and adolescents.¹⁵ In practice, the conditions under which children are detained vary. In some depots, unaccompanied minors are kept with female adult detainees, while in others they are kept separate from adults. Children in immigration detention don't have access to education. There are also no procedures in place for determining the best interests of the child. In its 2007 Concluding Observations on Malaysia, the UN Committee on the Rights of the Child recommended that Malaysia take urgent measures not to detain children in connection with immigration proceedings, unless necessary to protect their best interests, and then for the shortest time possible.¹⁶
21. We are concerned about the poor accountability of the government in relation to deaths in detention. NGOs have documented a case of an asylum seeker who was arrested when she was six months pregnant, and who lost the baby at eight months. She was taken to a hospital, where her baby was removed, and afterward brought back into detention.
22. We are also concerned about the detention of persons with disabilities and persons with mental and physical illnesses. We have come across cases where such individuals were not provided with the specialized care and treatment they desperately needed.
23. The government also confines victims of trafficking in substandard government shelters, failing to provide them with sufficient legal, translation and psychological resources. As a rule, they are not permitted to reside outside of these shelters.¹⁷
24. Nevertheless we commend the government for announcing on 14 January 2012 that victims of labour trafficking may be allowed to continue working in Malaysia, after their deposition in criminal cases against perpetrators.¹⁸ This was implemented for a group of 32 Bangladeshi workers even though there were a total of 409 female victims and 36 male victims rescued by the Police who actually received recognition of their status as trafficked persons in 2012.¹⁹

¹⁵ FIDH and SUARAM (2008), Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination, March, available at www.fidh.org/IMG/pdf/MalaisieCONJ489eng.pdf, accessed 11 March 2013.

¹⁶ Committee on the Rights of the Child, Concluding Observations: Malaysia, UN Doc. CRC/C/MYS/CO/1, 25 June 2007, Para 83

¹⁷ United States Department of State (2012) Trafficking in Persons Report - Malaysia, available at <http://www.state.gov/documents/organization/192596.pdf>, accessed 11 March 2013.

¹⁸ The Star Online (2012) Hisham: Human Trafficking Victims have Option to Work, available at <http://thestar.com.my/news/story.asp?file=/2012/1/14/nation/10263226&sec=nation>, accessed 11 March 2013.

¹⁹ Royal Malaysian Police (undated) *Mangsa Pamerdagangan Orang Yang Diselamatkan (PO), Mulai: 28.02.2008 – 31.12.2012* [Rescued Victims of Trafficking (Under Protection Order): From 28.02.2008 to 31.12.2012].

25. Non-citizens arrested for criminal offences are held for investigation for 14 days before being brought to court, unlike citizens, who must be brought to court within 24 hours.²⁰ After they are charged with a criminal offence, bail is denied as a rule as a result of flight risks. As those who claim trial inevitably face months of delay to the conclusion of their cases (on account of delays in accessing legal representation; delays in the court obtaining interpreters; and delays caused by the prosecution), the majority of non-citizens plead guilty in order to expedite their release from detention.
26. We are concerned about the rights violations experienced by domestic workers; their vulnerability to exploitation and forced labour; as well as the government's inattention to the protection of their rights. In 2012, Tenaganita received 263 cases in which it recorded 800 forms of rights violations – including non payment of wages, withholding of passports, isolation and non communication, various forms of abuse and violence and forced extension of contract from domestic workers. 32% of the women complained of sexual abuse and rape; 22%, when rescued, were severely malnourished due to denial of decent and sufficient food; 55% had unpaid wages; and many complained that they were forced to work beyond their two-year contract as employers found it difficult to get replacement workers.²¹ Similarly, Pusat Kebajikan Good Shepherd (PKGS) handled 53 domestic worker cases between 2011 and 2012. There were an average of 5 rights violations in each case, the most common being the withholding of passports, unpaid wages, isolation and non-communication, long working hours (no rest day and an average workday of 15 hours) and inadequate living conditions.²²
27. Domestic workers are recognized as “domestic servants” in the Employment Act 1955 and not as employees, and are excluding from some of the rights accorded to employees under the Act, such as provisions concerning their termination of contract, maternity benefits, rest days, hours of work, holidays, as well as termination, layoff and retirement benefits. This discriminatory exclusion has resulted in various violations of rights.
28. In 2011, the government implemented a regularisation programme, nicknamed ‘6P’, for non-citizens through private agencies. NGOs have received a large number of complaints from non-citizens who paid the fees required for regularisation and never obtained their documents. Despite filing cases with the Police, the Immigration Department and the Home Ministry to hold such agents accountable, no actions have been taken. Meanwhile the non-citizens involved remain undocumented. They are still being denied the right to work and the right to redress.

²⁰ Article 5(4) of the Federal Constitution allows for a non-citizen “arrested or detained under the law relating to immigration” (our emphasis) to be held in remand for up to fourteen days before he/she is to be produced before a magistrate. A citizen, however, must be produced before a magistrate within 24 hours.

²¹ Tenaganita (2013) Press Statement: The BN government institutionalizes human trafficking in domestic work, January 7.

²² See also the United States Department of State (2012) Trafficking in Persons Report - Malaysia, available at <http://www.state.gov/documents/organization/192596.pdf>, accessed 11 March 2013.

29. We are seriously concerned about breaches in the observation of the principle of *non-refoulement*. On 12 February 2012, the Malaysian government deported the journalist Hamza Kashgari to Saudi Arabia, where he risked being sentenced to death on charges of apostasy after he tweeted about the prophet Mohammed.²³ On 31 December 2012, the Malaysian government deported six Uighurs with pending asylum claims to China.²⁴

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

30. We remain concerned over the policies of the Immigration Department that obstruct the process for non-citizens in seeking redress, in particular, those who suffer abuse by employers. Foreign workers who file cases against their employers have had their passes (work permits) cancelled unilaterally, leaving them with irregular status and vulnerable to arrest, detention, punishment for immigration offences, and deportation. While migrant workers have been able to obtain one-month Special Passes from the Immigration Department permitting them to stay in Malaysia, these passes cost MYR100 (USD32), are renewed only for up to three months, and do not include the right to work. Impoverished and desperate, migrant workers often give up their cases, opting either to work illegally or to return home.
31. Migrants with irregular status suffer from harassment and extortion from the police. In a survey conducted by the International Rescue Committee in 2012 involving 1,003 respondents, about half of all respondents reported having paid money to Malaysian officials at least once in the past year, with amounts ranging from less than MYR50 (USD16) to MYR10,000 (USD3,300).²⁵ 65 percent said that they had had to make one to three payments; 38 percent had to pay more than four times.
32. In relation to detention, we echo the concerns expressed by the Working Group on Arbitrary Detention that detainees are unable to challenge the lawfulness of their detention and that they do not enjoy genuine recourse through the courts.²⁶ Detainees are often not informed of the charges against them and denied access to legal counsel.²⁷ When a non-citizen chooses to contest his/her detention, he/she is held in detention and is not allowed bail or the right to work.
33. We are concerned about the dismal number of prosecutions under the Anti Trafficking in Persons and Anti Smuggling of Migrants Act 2010 (formerly the Anti Trafficking in Persons Act 2007), especially of those engaged in labour

²³ Article 19 (2012) *Saudi Arabia and Malaysia violate rights of Saudi tweeter*, 22 February, available at: <http://www.unhcr.org/refworld/docid/4f4b66d02.html>, accessed 11 March 2013.

²⁴ Human Rights Watch (2013) *Malaysia: Stop Forced Returns to China*, available at: <http://www.hrw.org/news/2013/02/03/malaysia-stop-forced-returns-china>, accessed 11 March 2013.

²⁵ International Rescue Committee (2012) *In Search of Survival and Sanctuary in the City: Refugees from Myanmar/ Burma in Kuala Lumpur, Malaysia*, December.

²⁶ General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2.

²⁷ European Parliament (2010) *Malaysia: the practice of caning*, European Parliament resolution of 16 December 2010 on Malaysia: the practice of caning, P7_TA-PROV(2010)049, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0494+0+DOC+XML+V0//EN>, accessed 11 March 2013.

trafficking. In 2011, the government convicted 17 sex trafficking offenders and no labour trafficking offenders; in 2010, it convicted 14 offenders of sex and labour trafficking.²⁸

Right to privacy, marriage and family life

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

Right to Freedom of Association

35. According to the Trade Union Act 1959, migrant workers can be members but not leaders of associations and unions. This is discriminatory. With migrant workers increasingly making up the majority of workers in certain factories and in the construction and plantation sectors, this hinders their ability to unionise.

Right to work and to just and favourable conditions of work

36. As most refugees do not have formal authorisation to work, they are vulnerable to exploitation. In a survey conducted by the International Rescue Committee involving 1,003 refugee respondents in 2012, just over 30 percent reported experiencing abuse in the workplace.²⁹ Of these, 80 percent reported unpaid wages or receiving only partial wages; 42 percent experienced verbal abuse; 15 percent suffered from an injury in the workplace; 15 percent had been dismissed without reason; and, 6 percent suffered from physical abuse. Employers committed most of these abuses.
37. We are concerned about the high incidence of forced labour amongst asylum seekers and refugees. In a study of 1,074 individuals conducted in 2011, Health Equity Initiatives found that around one-third had experienced forced labour.³⁰ 70.2% of respondents who had experienced forced labour showed symptoms of anxiety, while 68.7% showed symptoms of depression. Unemployment was also associated with higher levels of depression, anxiety and stress.
38. The system of outsourcing of labour, introduced by the government in 2006, contributes to exploitation, forced labour, and labour trafficking. Under this system, companies licenced to practice outsourcing are permitted to recruit and

²⁸ See also the United States Department of State (2012) Trafficking in Persons Report - Malaysia, p. 235, available at <http://www.state.gov/documents/organization/192596.pdf>, accessed 6 March 2013.

²⁹ International Rescue Committee (2012) In Search of Survival and Sanctuary in the City: Refugees from Myanmar/ Burma in Kuala Lumpur, Malaysia, December.

³⁰ Health Equity Initiatives (2012) Forced labor, human trafficking and mental health. The experiences of refugees and asylum seekers in Malaysia, HEI: Kuala Lumpur.

manage foreign workers, deploying them to work for different companies. Foreign workers under this system have been forced to engage in work other than what they were promised; have been left with no work and no pay; and have been given inadequate food and accommodation. Breaches of their terms of contract occur frequently, especially in relation to the payment of wages.³¹

Right to health

39. Non-citizens continue to face discrimination with regard to access to health services. They are required to pay foreigner rates at government hospitals.³² Although refugees registered by UNHCR can obtain a 50% discount on foreigner rates, access remains an issue, as refugees are still unable to afford treatment. Also, this discount policy is implemented unequally at different hospitals. Foreign spouses also have to pay foreigner rates, no matter the length of their residence in Malaysia – in some cases for more than decades.
40. Refugee children are vulnerable to sexual exploitation. In a study conducted by Health Equity Initiatives with 114 refugee children from Burma (aged 10-19), 29.0% of the boys and 8.0% of the girls report being touched below the waist. Among the 22 who responded being touched below the waist, 14 reported to be “feeling angry” and five “scared”. Three out of four children did not know where to seek help if they were forced to have sex or if someone were physically intimate with them.³³
41. Malaysia practices mandatory testing for foreign workers for 15 infectious diseases and pregnancy. A foreign worker tested positive is immediately deported, including pregnant women. They are informed that they are “not fit to work” and are sent back. We are concerned that the right to know and seek treatment is denied, especially with regard to infectious diseases.
42. In order to avoid deportation, pregnant foreign workers choose to give birth outside of the healthcare system, thus facing high risks. There are cases where they abandon employment and live with irregular status. The registration of children becomes difficult, leading them to become stateless.
43. The Malaysian government does not include migrant workers in its HIV/AIDS programmes and thus denies them access to information, counselling, and support services. Migrant workers job security is continuously in threat due to mandatory testing, which has led migrants not to seek treatment. Undocumented migrant workers face risk of arrest if they seek treatment in public hospitals and thus do not seek treatment.

³¹ For further information, see SOMO (2013) Outsourcing Labour: Migrant Labour Rights in Malaysia’s Electronics Industry, SOMO: Amsterdam, available at http://somo.nl/publications-en/Publication_3922 accessed 6 March 2013.

³² For example, for outpatient treatment, citizens pay MYR1 while non-citizens pay MYR15. For deposits for admission into third class wards for maternity cases, citizens pay MYR15 while non-citizens pay MYR800. See for example, the full list of charges at Hospital Kuala Lumpur, available on <http://www.hkl.gov.my/>, accessed 6 March 2013.

³³ Health Equity Initiatives (2012) Sexual Education in Burmese Refugee School-Aged Adolescents, Kuala Lumpur, HEI.

Right to education

44. Non-citizen children lack access to education at public institutions at all levels. While the Malaysian government has permitted some NGOs to set up informal schools for refugee and migrant children, thousands of children still have no access to education. In an earlier report on his mission to Malaysia in 2007, the Special Rapporteur on Right to Education stated that he “considers one of the most serious education-related problems in Malaysia to be the lack of access to education, at all levels, for children lacking Malaysian citizenship status, including refugee children, asylum-seekers, children of migrant workers, and stateless children, possibly as well street children. A problem common to all these children is the lack of documentation, which is an insuperable obstacle as regards access to education since, as was mentioned previously, no child may be enrolled in any recognized public education institution unless he/she has a birth certificate.”³⁴ This also applies to non-citizen children of foreign spouses.

RECOMMENDATIONS

We urge the government of Malaysia to:

1. Amend the Federal Constitution in order to ensure that the children of Malaysian mothers born abroad are able to gain citizenship by operation of law.
2. Amend laws and policies that discriminate against foreign spouses, providing them with the right to work while they are on temporary passes, and to ensure that they are able to gain permanent residence status without unreasonable delay. Ensure that foreign spouses (both women and men) who are separated, divorced or widowed, are able to enjoy the right to reside and the right to work independently.
3. Abolish the practice of whipping/ caning, in particular, for offences under the Immigration Act 1959/63.
4. Increase the level of cooperation with UNHCR in relation to the arrest, detention, and deportation of all asylum seekers and refugees – including those without official UNHCR documents at the time of their arrest.
5. Implement the recommendations of the Working Group on Arbitrary Detention, which include, *inter alia*, to “rule out detention of asylum-seekers and refugees as well as vulnerable groups of migrants, including unaccompanied minors, families with minor children, pregnant women, breastfeeding mothers, elderly persons, persons with disabilities, people with serious and/or chronic physical or mental health problems”; to “provide for a system of legal aid for immigration

³⁴ General Assembly (2009) Human Rights Council, 11th Session: Report of the Special Rapporteur on the right to education, Vernor Muñoz Villalobos, Addendum: Mission to Malaysia, A/HRC/11/8/Add.2, p. 14.

detainees” and to “assume the responsibility of improving the conditions in immigration detention centres as a matter of urgency”.³⁵

6. Permit victims of trafficking (including those with Protection Orders) to reside and work outside of government shelters, and provide them with legal alternatives to removal to their country of origin in cases where they would face retribution or hardship.
7. Strengthen the protection of the rights of domestic workers in collaboration with the embassies of their country of origin.
8. Conduct detailed investigations of all deaths in detention – making the results of these investigations available to their families of the deceased – and take concrete measures to prevent such deaths from occurring again.
9. Use Section 55 of the Immigration Act 1959/1963 to exempt vulnerable non-citizens – in particular, victims of exploitation, forced labour and trafficking; children; and asylum seekers and refugees – from provisions of the Immigration Act that breach their rights.
10. Regularise refugees, providing them with the right to work and to reside in Malaysia.
11. Ensure that all non-citizens, including those with irregular status, have unhindered access to justice by providing them with legal aid and allowing them the right to reside and to work in Malaysia (in order to support themselves) until their cases are adjudicated and avenues for appeals exhausted.
12. Take measures to combat the exploitation and forced labour of migrant workers and refugees, both authorised and with irregular status. In particular, regulate the labour sector, especially in the construction sector; agriculture/ plantations sectors; domestic work; and employment through the outsourcing of labour, where there is a higher incidence of forced labour.
13. Ensure that all non-citizens who have experienced human trafficking and forced labor have access to appropriate legal, medical, and protection services regardless of their legal status.
14. Ensure that all non-citizens have universal access to healthcare without discrimination. In particular, provide a one-stop universal access to healthcare service for victims of violence at public hospitals regardless of their documentation status and without the need for a police report.
15. Ensure that all non-citizen children enjoy the right to education.
16. Establish a national legal and administrative framework that recognises the status and rights of asylum seekers and refugees in accordance with the 1951

³⁵ General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2, para 119, 123, and 124.

Convention Relating to the Status of Refugees. Consider becoming a state party to the 1951 Convention and to its 1967 Protocol.

17. Consider becoming a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
18. Implement the recommendations of the Committee on the Elimination of Discrimination Against Women and on the Committee on the Rights of the Child, in particular, those related to the rights of non-citizens.
19. Extend a standing invitation to all thematic procedures.