

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Review Meeting

Migration: Human Rights Protection of Smuggled Persons

Geneva, 25-26 July 2005

HUMAN SMUGGLING, MIGRATION AND HUMAN RIGHTS:
A MALAYSIAN PERSPECTIVE

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INTRODUCTION

1. Trade and economic development has historically brought about cross-border movement of people in the region. Malaysia has been a recipient of various migrant communities in Asia. However in the last 15 years there has been a substantial increase in regular and irregular migration into the country.
2. Malaysia views the migrant issue in the context of national security. The **Internal Security Act 1960** and other preventive legislations were enacted to combat the threat of communism. The state of emergency declared in 1969 to curb racial riots has not been withdrawn and is technically in force. The use of the Internal Security Act and other Preventive legislations has curtailed the fundamental liberties of citizens guaranteed under the Federal Constitution. The influx in irregular migration during the last decade is viewed seriously by the government. The **Immigration Act 1959/63** is the key legislation that regulates entry, work and stay in the country. It was amended to include punitive measures to eliminate irregular migration and designed to send a message to foreign nationals that Malaysia will not tolerate irregular entry, stay and employment. Migrants such as refugees, trafficked victims and economic migrants despite their vulnerabilities come within the controls of the Immigration Act.
3. Malaysia is both a destination and a transit country in South East Asia for human smuggling. As a receiving country, it is estimated that 1.2 million undocumented migrants mainly from Indonesia and Philippines remain and/or work in Malaysia. As a transit country, its porous borders permit the entry of migrants through irregular channels from other Asian countries who are destined for Australia, Singapore and Saudi Arabia. Employment opportunities, geographical location and immigration policies are among other reasons that make Malaysia a strategic point in

South East Asia for human smuggling syndicates. Due to economic disparity and lower income levels in most of the countries in the region, human smuggling to Malaysia is likely to grow¹.

4. The aim of the report is to examine human rights issues that arise in relation to human smuggling in the migration process. The report provides an understanding of the policy and legal framework in relation to irregular migration in Malaysia in particular human smuggling. The report posits the following question: whether the immigration control system in Malaysia effectively protects both the state and persons who enter, remain and work in Malaysia from human rights abuse.
5. The report is based on library research and interviews conducted with economic migrants, asylum seekers, refugees, NGO's with migrant interest, a community leader of refugees support group. Interviews were also conducted with lawyers specialising in immigration and criminal law, President of the Malayan Trade Union Congress, Police Officers of the Enforcement Division, Internal Security and Public Order Department and Anti Vice, Gaming and Secret Society Division, Criminal Investigation Department of the Royal Malaysia Police, Bukit Aman and UNHCR.

¹ Human Smuggling is a growing Security Challenge www.apcss.org/Conference/CR_ES/020219ES.htm

PART ONE

6. This part looks at the Immigration policy's thrust in the recruitment of foreign contract labour including policy instruments that deal with regular and irregular migration. It will discuss Malaysia's position in the adoption of international instruments in the local environment.

IMMIGRATION POLICY THRUST

7. The immigration policy provides for the recruitment of foreign contract labour to meet the labour needs of the country. Migrant workers are employed in low skilled jobs for a short term. The immigration policy determines age, gender, nationality, the employment sector, location and duration of residence and employment of migrant workers in Malaysia². Migrants are issued with identity cards. Migrant activist's state regular registration and identity cards issued to migrants is for the state to monitor and control the movement of labour.
8. The Malaysian Trade Union Congress President, says that Malaysian workers and migrant workers must work together in solidarity of workers rights. Migrant workers must be recognised as guest workers and not be dismissed as cheap labour. To do this Malaysia needs a comprehensive foreign contract labour policy which provides adequate protection of migrant worker rights.
9. Migrant policies are viewed in the context of national security. Issues that come under the rubric of national security include the influx of illegal immigrants and violent crimes associated to migrants.
10. The influx of illegal immigrants is said to provide an opportunity for criminals, including drug traffickers, smugglers and subversive political activists, who enter the country disguised as economic migrants. Currently there are an estimated 2.6 million economic migrants in Malaysia and half of these workers are said to be undocumented³. Indonesian migrant workers form the largest group of unregistered workers in the country. The state of Sabah has the highest incidence of unauthorised entry and employment of migrant workers. Unofficial figures suggest that there are two unregistered workers to one legally registered worker⁴.
11. Migrant activist state that the increase in irregular migration from Indonesia to Malaysia is due to unscrupulous recruiting agents, labour trafficking, human smuggling including a highly syndicated trade in documents and corruption involving law enforcement agencies.
12. Violent crimes associated with migrant workers, police records show that in the year 2004, foreign nationals were responsible for 3500 of 156 455 of the total cases of crime committed in the country⁵. This constitutes about 2.24 per cent of the total number of cases. Although, the number was small but it is viewed with concern as the crimes committed by migrants were mainly violent crimes such as murder, attempted murder, armed gang robbery and rape.

² Mohd Hafiz Lo Bin Abdullah Immigration Department Malaysia "Immigration Law- Rights and Responsibilities of Migrant Workers" MTUC/ILO Regional Workshop On Migrant Workers In Malaysia 18-19 April 2005 Petaling Jaya

³ New Straits Times 30 March 2005 " Why we still rely on foreign workers www.mohr.gov.my/mygoveg/extras/isumarch05.htm#b6

⁴ Vijaya Kumari Kanapathy, Senior Analyst Institute of Strategic & International Studies, "International migration and labour markets in Asia: Economic Recovery, Labour market and migrant workers in Malaysia", Country Report Malaysia.

⁵ Dato Othman bin Talib, Royal Malaysian Police, MTUC/ILO Regional Workshop On Migrant Workers in Malaysia, 18-19 April 2005, Petaling Jaya.

13. For the same year, serious crimes committed by foreigners accounted for 1654 of 21 859 cases, representing 7.57 per cent of all serious crimes. Of the total number, 1846 of 134 96 or 1.37 per cent were involved in crimes related to property. Most of the crimes were committed in Sabah followed by Selangor, Johor, and Kuala Lumpur. Migrants involved in serious crimes include nationals from Indonesia, the Philippines and Bangladesh.
14. Other national concerns relate to threat of communicable diseases related to migrant workers. The Health Minister in his speech at the UN Health Millennium Development Forum said that “Malaysia faces a threat from emerging and re emerging infections from illegal immigrants and foreign workers. It is estimated that 2.8% of an estimated one million foreign workers examined in 2004 suffered from various disease. For example, about 50% suffered from hepatitis, 12.3% from tuberculosis, 8.4% from sexually transmitted diseases and 1.3% from HIV⁶.”
15. Pursuant to **Section 8(3) of the Immigration Act 1959/63** foreign workers are required to undergo mandatory medical examination which includes HIV/AIDS testing for obtaining the work permit before coming to Malaysia ⁷. Ten percent of migrant workers are subjected to random checks for HIV, Hepatitis and pregnancy at selected entry points⁸. On 18 Nov 2004, the Cabinet Committee on Health and Safety stated that all foreign workers must undergo an extra full medical check up, a month after their arrival. This is because migrant workers were found to be responsible for the increase in communicable diseases in the country. Migrant workers found carrying communicable diseases will be deported immediately⁹.
16. A system has been established to conduct medical examination on foreign workers. The medical examination is carried out by private medical practitioners registered with Foreign Workers Medical Examination Monitoring Agency (FOMEMA). The medical examination results are forwarded to FOMEMA. The role of FOMEMA is to receive the results, enter the data into a data bank and inform the results to both the Immigration Department and Health Ministry. The Immigration Department on receiving the results will decide if a work permit can be approved and issued. Health policy and regulations states that migrant worker’s who tested positive for any one of the diseases or is found to be pregnant will have their work permit revoked or not renewed and will be asked to leave the country immediately¹⁰. The influx of undocumented migrants is a health concern as undocumented migrants do not undergo the regulated medical system to determine communicable diseases.
17. Due to the national security concerns above, the policy instruments are aimed to control and regulate people who enter, remain and work in Malaysia and to eliminate irregular migration.

⁶ The Star 23 June 2005 “Immigrants bring threat of disease, says Chua”.

⁷ Dato Dr Faizal of Ministry of Health, Malaysia, “Health Policies for Foreign Migrant Workers In Malaysia- HIV/AIDS Prevention, Policies and Regulation”, Servant or Worker, Report: National Consultation on Foreign Workers Malaysia 2002. Tenaganita, Kuala Lumpur, pg. 81.

⁸ Dato Dr Faizal of Ministry of Health, Malaysia, “Health Policies for Foreign Migrant Workers In Malaysia- HIV/AIDS Prevention, Policies and Regulation”, Servant or Worker, Report: National Consultation on Foreign Workers Malaysia 2002. Tenaganita, Kuala Lumpur, pg. 81

⁹ Extra Health Screening for Foreign Workers, The Star Online, Oct 30 2004 <http://thestar.com.my/news/story.asp?file=/2004/10/30/nation/9279104&sec=nation>

¹⁰ Dato Dr Faizal of Ministry of Health, Malaysia, “Health Policies for Foreign Migrant Workers in Malaysia- HIV/AIDS Prevention, Policies and Regulation”, Servant or Worker, Report: National Consultation on Foreign Workers Malaysia 2002. Tenaganita, Kuala Lumpur, pg. 82

THE LEGAL FRAMEWORK

18. The laws that spell out the immigration policy are the **Immigration Act 1959/1963**, **Immigration Regulations 1963** and **Passports Act 1966**. The **Immigration Act 1959/1963** is the key legislation that controls, among others, aspects related to entry into or departure from the country, provisions of visas for legal stay and work. The Immigration Department a component of the Home Affairs Ministry, outlines the principles of the immigration policy and co-ordinates the implementation of the policy. The departments which are responsible in enforcing the law are the Immigration Department, Customs and the Police Force.
19. With the rapid increase in migration into the country and the increase in irregular migration, the government saw the need to control the influx of undocumented migrants. The Immigration Act 1959/1963 was amended and came into effect in August 2002.
20. The amendment introduced stringent punishments for employers hiring and harbouring undocumented migrants and for first time offenders who enter Malaysia unlawfully¹¹. There is no priority for protection measures for vulnerable migrants such as trafficked victims, refugees and registered migrant workers whose work permit is wrongfully cancelled by employers in labour disputes. These categories of migrants are liable to arrest, charge, whipping, detention and deportation for Immigration offences.

IMMIGRATION ACT 1959/63

Entry Permit

21. A non-citizen seeking to enter, stay or work in Malaysia is required to obtain an entry permit or pass¹². There is no requirement of a visa for citizens of ASEAN member countries who wish to enter and remain in Malaysia for less than 30 days. ASEAN nationals specifically Indonesians and Filipinos overstay their social visit pass and engage in employment, thereby increasing the number of undocumented migrants.
22. A non citizen is identified as arriving and/or remaining unlawfully in Malaysia if the non citizen arrives without a valid travel document¹³; or via a non gazetted entry point¹⁴; or overstays the permitted period stated in the visa or social visit pass¹⁵.
23. Migrants who do not comply with the immigration requirements relating to entry, stay and work are commonly referred to as “illegal immigrants”, “aliens” or undocumented migrants. Economic migrants who are not registered, trafficked victims and refugees are identified as prohibited

¹¹ Sections 55B & 55D Immigration Act 1959/63; Employers are liable to fines between RM 10 000 – RM 50 000 per employee and maximum jail term of one year. Employers who hire more than five illegal immigrants are liable to mandatory whipping and a jail term maximum of five years. Those who are found guilty of harboring more than five illegal immigrants are liable to be fined between RM 10 000 and RM 50 000, a jail term of between six months to five years and mandatory whipping not exceeding six strokes¹¹. Owners or tenants of building, houses or premises who allow illegal immigrants to occupy or enter their properties (in the first instance) would be liable to a fine between RM 5 000 – RM 30 000 and/or jail term not exceeding a year for each illegal immigrant found on their premises. For a second or subsequent similar offence the fine is between RM 10 000 – RM 60 000 and/or jail term not exceeding two years for each illegal immigrant.

¹² Section 10 Entry Permits Part III Immigration Act 1959/63.

¹³ Section 6 Control of Entry into Malaysia, Admission into and Departure From Malaysia, Part II Immigration Act 1959/63

¹⁴ Section 5 Control of Entry into Malaysia, Admission into and Departure From Malaysia, Part II Immigration Act 1959/63

¹⁵ Section 15 Immigration Act 1959/63

immigrants either for unauthorised entry; or not being in possession of valid travel documents; or are in possession of forged travel documents¹⁶.

24. The Immigration Act does not distinguish the classification of prohibited immigrants and categories of vulnerable persons in need of protection. The Immigration Act regards trafficked victims, refugees and registered migrant workers whose work permit is wrongfully cancelled as immigration offenders regardless of their vulnerability or exploitation.

Work Permit¹⁷

25. The authorisation that the migrant worker secures to enter, work and reside in Malaysia is a Single Entry Visa and Visit Pass (Temporary Employment). The Visit Pass (Temporary Employment) is the work permit¹⁸. The work permit is valid for a year¹⁹.
26. Pursuant to the **Employment (Restriction) Act 1968** and **Regulation 9(3) Immigration Act 1959/1969** the work permit issued to migrant workers is valid only in respect of the particular employment and the employer specified in the permit. The permit is non-transferable. The police department classifies registered migrant workers with valid work permit but who contravenes the conditions of the work permit such as working in sectors other than permitted, as undocumented migrants²⁰. These legislations restrict the free choice of employment and alternative employment in the event of termination of employment. If the migrant worker wants to discontinue his employment due to abuse or exploitative work conditions, the migrant worker has to return to his home country.
27. The worker is not permitted to move and seek employment in another work place or enterprise even if there is a vacancy. This legislation has encouraged employers to impose oppressive working conditions or breach of the employment contract. Migrant workers have no alternative but to accept the terms. Those who seek alternative employment will become undocumented. This has also caused the increase in the number of undocumented workers in the country.
28. At present migrant workers in the construction sector are permitted to work for other employers with prior approval of the Immigration Department²¹.

Arrest, Charge, Punishment of Whipping, Detention and Removal pursuant to the Immigration Act

29. **Arrest & Charge:** Police and immigration officers have powers relating to arrest and search of any premises, vehicles, vessels or aircrafts without a warrant²²; and powers and authority relating

¹⁶ Section 8 Prohibited immigrant Admission into and Departure from Malaysia, Part II Immigration Act 1959/63.

¹⁷ Section 9 Immigration Regulations 1963

¹⁸ Recruitment of foreign Labor www.imi.gov.my

¹⁹ Encik Mohd Hafiz Lo Bin Abdullah, Department of Immigration, Malaysia “ Immigration law – Rights & Responsibilities of Migrant Workers,” MTUC/ILO Regional Workshop On Migrant Workers In Malaysia 18-19 April 2005, Petaling Jaya.

²⁰ Dato Othman bin Talib, Royal Malaysian Police, MTUC/ILO Regional Workshop On Migrant Workers in Malaysia, 18-19 April 2005, Petaling Jaya; See also, Regulation 9(3) Employment Pass; Regulation 39(b) Penalties Immigration Regulations 1963.

²¹ Encik Mohd Hafiz Lo Bin Abdullah, Department of Immigration, Malaysia “ Immigration law – Rights & Responsibilities of Migrant Workers,” MTUC/ILO Regional Workshop On Migrant Workers In Malaysia 18-19 April 2005, Petaling Jaya.

²² Section 51 Immigration Act 1959/63

to arrest detention or removal of immigration offenders²³. Immigration offences committed by migrants relate to unlawful entry, stay or employment²⁴.

30. The Immigration Act 1959/63 was amended in 2002 which introduced the punishment of whipping for first time offenders for unlawful entry. **Section 6 of the Immigration Act** states that a non citizen arriving in Malaysia without a valid travel document is liable to a fine not exceeding RM 10 000 or jail term not exceeding five years, or to both, and shall also be liable to whipping of not more than six strokes. Caning is a discretionary provision for first time offenders.
31. **Section 36 of the Immigration Act** which was amended in 1997, states that a non-citizen who returns and remains unlawfully is punishable to a maximum fine of ten thousand ringgit or jail term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes, and shall be removed.
32. **Removal:** A non citizen who unlawfully enters or re-enters, attempts to unlawfully enter or re-enter or unlawfully remains in Malaysia is liable to removal whether or not proceedings are taken against him²⁵.
33. **Detention for the purpose of Removal:** A non citizen liable to removal may be detained for up to thirty days from the date of arrest or detention pending an order of removal being made²⁶.
34. **Detention for the purpose of investigation:** A non citizen may be detained for investigations without a court order for a maximum period of fourteen days from the date of arrest or detention. An extension of the detention for a maximum period of fourteen days may be obtained by way of a court order pursuant to Section 117 of the Criminal Procedure Code for the purpose of investigations into an offence, to make inquiries or to effect removal from Malaysia²⁷.
35. **Detention subsequent to order of removal:** Once an order for removal is made a non citizen may be detained in custody for such period as necessary to effect removal²⁸. The detention is indefinite.
36. There is a difference in safeguards provided to a citizen and a non-citizen for offences committed under the Immigration Act. A citizen shall be brought before a Magistrate within twenty fours of arrest either to be charged or to obtain a remand order for a maximum period of fourteen days. A non-citizen may be detained without a court order for a maximum period of fourteen days from the date of arrest or detention and an extension of maximum fourteen days with a court order.
37. Most of the cases involving migrants are within the scope of the Immigration Act. Migrants may be detained for a maximum period of twenty-eight days, either for the purpose of inquiry, investigations or removal. The question that arises is, do police investigations require a maximum

²³ Sections 35, 39(1) & 41 Immigration Act 1959/1963.

²⁴ Mohd Hafiz Lo Bin Abdullah Immigration Department Malaysia "Immigration Law- Rights and Responsibilities of Migrant Workers" MTUC/ILO Regional Workshop On Migrant Workers In Malaysia 18-19 April 2005 Petaling Jaya.

²⁵ Sections 56(2) offences, Sections 31-33 Removal from Malaysia Immigration Act 1959/63.

²⁶ Sections 35 Removal from Malaysia Part V Immigration Act 1959/63.

²⁷ Section 51(5)(a)(b) Immigration Act 1959/1963; The interpretation of Section 51(5)(b) by Dato Othman bin Talib, Royal Malaysian Police, MTUC/ILO Regional Workshop On Migrant Workers in Malaysia, 18-19 April 2005, Petaling Jaya;

²⁸ Sections 34 Detention of Person Ordered to be removed; Removal from Malaysia Part V Immigration Act 1959/63.

period of 28 days to determine if a migrant is in possession of valid travel document or the mode of entry. Is the offence complex that investigation requires a longer period of time? The police or immigration investigation process involving migrants severely curtails the liberty of vulnerable migrants.

38. **The Royal Police Commission Report**²⁹ in April 2005 was aimed at the enhancement of the operation and management of the Royal Malaysian Police. The Royal Commission among others made a finding of corruption in the police force, abuse of police powers and the violation of human rights principles and prescribed laws.
39. One of the two main factors identified as contributing to the police force deficiencies is the police abuse of safeguards for human rights in the criminal procedure code. Some examples of abuse include application of maximum remand period for suspects with little attempt to complete investigations quickly. The long detention leads to severe decline in mental and physical health of detainees. The Commission recommends that a code of practice be adopted relating to arrest and detention of person; compliance with human rights and prescribed law be made one of the Police Departments three priorities. The commission also called on the police to be more sensitive when dealing with women, children and other vulnerable groups in particular migrant workers and refugees.

Punishment of whipping

40. Thousands of economic migrants are arrested, detained and punished with whipping. In most cases the registered migrant workers work permits are wrongfully cancelled, especially in labour disputes. Such an act will change the status of the migrant worker into an irregular worker. The sentence is meted out in court proceeding in the absence of interpreters and migrant's explanations of passports being held by employers or refugee status are ignored. Migrant activists state 18 000 migrants have been canned since the amendment to the Immigration Act and 60 000 migrants have been sentenced to the punishment of whipping. There is no equal application of the punitive aspects of the law between the employer who hire undocumented migrants and economic migrants³⁰.

Case Study: Md Hossain

41. Md Hossain a Bangladesh national had filed a complaint of unfair dismissal in the Industrial Relations Department, reference no (Bil(3)d/m.JPP(KP) sk.20.111/2001). On 27 May 2003, he was arrested and sent to a detention camp for suspicion of illegal entry. On 11 June 2003 he was charged under Section 6 of the Immigration Act 1959/1963 for illegal entry. During investigations he had repeatedly informed the immigration officers that he had a case pending in Court and his passport was held by the Immigration Department. The immigration officer refused to listen to him. He was charged and sentenced to five months jail and one stroke of the cane. Giving an account of the whipping, Md Hossain said that he fell unconscious for ten minutes after he was whipped and was not able to sit for twelve days³¹.

²⁹ "Police Commission's 125 recommendations", May 16 2005, www.malaysiakini.com

³⁰ "Address root causes behind illegal workers problem, government urged" 31 July 2002 www.Malaysiakini.com

³¹ Tenaganita, "Implications of The Enforcement of the Amended Immigration Act" Migrant Workers Access Denied, Kuala Lumpur_pg. 33.

*Case Study: Mangal Babadur Gurung*³²

42. Mangal, a foreign contract worker from Nepal worked as a restaurant helper for a monthly salary of RM400/-. He possessed a valid work permit and worked from September 2003 – October 2004. During his employment there were instances of abuse by his employer and non-payment of salary. The employer kept Mangal's passport without his consent. In Dec 2004 Mangal filed a complaint in the Labour Department for unpaid wages and made a police report of abuse and unpaid wages. The Immigration Department was notified that his passport was being held by his employer without his consent.
43. In March 2005 Mangal was arrested during the crackdown on illegal immigrants. Mangal informed the arresting officer of his pending case in the labour court and that his passport was unlawfully held by his employer. But the arresting officer paid no attention to Mangal's explanations. Mangal was charged for illegal entry pursuant to Section 6(3) Immigration Act 1959/63 and was sentenced to ten months imprisonment and a stroke of the rotan. His Appeal was heard in the High Court in May 2005. The Court found that Mangal had a passport and a valid work permit and set aside the conviction and ordered his release. Mangal was in detention for 51 days and the punishment of whipping had been executed.
44. The Human Rights Commission of Malaysia, Suhakam, urged the government to reconsider the penalty of whipping for undocumented migrants. Suhakam referred to whipping of migrants as inhumane and cruel and urged the government to seriously consider repealing the caning provision. During an inspection of the Semenyih detention camp, Suhakam observed that the authorities had to delay deportation of migrants who had been whipped to await scars to heal. Suhakam also observed detainees with fresh scars on their buttocks had to sit and sleep on cement floors due to overcrowding in the detention camps³³.
45. Home Affairs Minister Datuk Seri Azmi Khalid in responding to Amnesty international's call to abolish caning for convicted illegal immigrants said "that is our law, we have the right to determine what is best for our country³⁴."

OTHER POLICY INSTRUMENTS

Special Security Operations

46. Special Security Operations code named "Operasi Nyah 1" was launched in 1991 to flush out illegal immigrants³⁵. Pursuant to this security operation there is an increase in surveillance on unauthorised entry and employment of migrants. Police and Immigration officials conduct raids on migrants suspected of being illegal immigrants.
47. Between 1991-2005 the police carried out 1 519 420 security operations and arrested 899 496 illegal immigrants. Between 2000-2004 the police carried out security operations on 691 964 migrants of which 465 870 or 67.32% of migrants were found to be undocumented. The security operations saw the arrest of 90 different foreign nationals for immigration offences. Indonesians topped the list with 302 361 or 64% of the total number of migrants arrested, Philippines

³² Marhalim Abas, The Malay Mail 13 May 2005 "Wrongful Conviction of Nepali Worker – A Stroke for Nothing?"; Tenaganita, Kuala Lumpur "Stop the Crackdown Free Mangal".

³³ Claudia Theophilus, 28 January 2003 Malaysiakini "Suhakam-Whipping of illegal immigrant violate human rights."

³⁴ The Star 22 June 2004 "Cruel bosses to be blacklisted."

³⁵ Dato Othman bin Talib, Royal Malaysian Police, MTUC/ILO Regional Workshop On Migrant Workers in Malaysia, 18-19 April 2005, Petaling Jaya

nationals made up 50 752 or 10 % of the total number of migrants arrested and Myanmar nationals made up 35 370 or 7.5%³⁶ of the total number of migrants arrested.

48. At the end of the amnesty on 28 February 2005, the police launched special operation code named “Operasi Tegas” between 1 March 2005 – 8 April 2005, a total of 4713 undocumented migrants were arrested in the raids³⁷.
49. In June 2005 the police launched special operation code named “Operasi Mamba” to weed out immigrants suspected of being involved in criminal activity. Reports indicate migrants hid in roof lofts³⁸ and iceboxes used for storing meat³⁹ to evade arrest, thus endangering their life.
50. The police and immigration raids are targeted at undocumented migrants. The action against employers who hire “illegal immigrants or harbour “illegal immigrants which is punishable, is minimal. Police records indicate that 803 employers were arrested between 1992 and April 2005⁴⁰. Migrants are victims of corruption and harassment. Migrant rights activist, state that they receive “complaints from migrants almost daily on how they have to pay policemen or enforcement officers in order to avoid being arrested”⁴¹. Migrant workers pay enforcement authorities to avoid arrest, detention, deportation and whipping pursuant to the Immigration Act. Thus heavy and punitive penalty works against the interest of migrants. Local enforcement authorities take advantage of migrant vulnerability.
51. **The Royal Police Commission Report** in April 2005 among others, list various forms of police corruption which include bribe taking, complicity with the alleged victims, collusion of senior police officers with crime syndicates. The anti corruption agency found the police as the most corrupt among the government agencies. The Police Commission recommends among others to make eradication of police corruption one of the police departments’ reform priorities.

Detention Camps⁴²

52. Undocumented migrants are held in police lock ups, prisons and detention camps. Detention camps are immigration depots used to detain immigration offenders for the purpose of investigation, remand hearing and those awaiting deportation⁴³. Detention camps are located in all states namely Ajil, Terenggan; Tanah Merah, Kelantan; Belantek, Kedah; Juru, Penang; Semuja Sarawak; Machap Umboo, Melaka; Lenggeng, Negeri Sembilan⁴⁴; Semenyih, Selangor; Langkap,

³⁶ Dato Othman bin Talib, Royal Malaysian Police, MTUC/ILO Regional Workshop On Migrant Workers in Malaysia, 18-19 April 2005, Petaling Jaya.

³⁷ Dato Othman bin Talib, Royal Malaysian Police, MTUC/ILO Regional Workshop On Migrant Workers in Malaysia, 18-19 April 2005, Petaling Jaya.

³⁸ The Star 1 June 2005 “Illegals fall into arms of the law- Ceiling collapse foils escape bid.”

³⁹ The Star 4 June 2005 “123 illegals detained in raid”.

⁴⁰ Statistic’s provided by the Enforcement Division, Internal Security and Public Order Department. Royal Malaysia Police.

⁴¹ Fernandez Irene ‘Migrant Workers: Rage Against Corruption and Injustice’ Malaysia Migrant Workers Access Denied. Tenaganita Kuala Lumpur. p 40

⁴² Section 51A Immigration Depot

⁴³ See Sections 34, 35 and 51(5)(b) Immigration Act 1959/63.

⁴⁴ Fauwas Abdul Aziz July 5, 2005 www.Malaysiakini.com “Detention camp ‘hospitality’ almost kills four refugees.” Ki Tho a Burmese Chin refugee was detained in Lenggeng Detention Camp for three months. The food and water supplied in the detention camp were not clean. There were maggots found in the rice supplied. There was inadequate medical care and incidence of physical abuse while the detainees prayed. The Chin refugees are Christians. Due to unclean food and water supply Ki Tho and three others became severely malnourished. About 40 other Chin asylum seekers suffered from dysentery. About a month in detention Ki Tho suffered from partial paralysis to his lower limbs. Ki Tho’s health condition was critical and required regular medical attention but he was examined once at a nearby clinic. The medicines dispensed by UNHCR volunteer medical team were

Perak; Kemayan, Pahang; Immigration depot in Kuala Lumpur International Airport and Sabah⁴⁵.

53. The living conditions in detention camps have often been criticised by human rights groups. Suhakam upon inspecting several detention camps observed that living conditions in detention centres failed to meet minimum living standards, were overcrowded and understaffed⁴⁶. Suhakam cited some examples of deplorable living conditions in the detention camps. The Macap Umboo detention centre for male detainees was in a deplorable state due to overflowing septic tanks. Two buildings in the Lenggeng detention centre were clogged. Due to the unhygienic environment detainees suffered from skin infections, rashes and pus formation was seen oozing from their skin. In the Belantek detention centre, detainees had to sleep along corridors due to lack of space. Suhakam urged the government to pay attention to the unhygienic conditions at the detention centres and recommended that the health authorities conduct regular health examinations.
54. Suhakam also observed that children, Rohingya and Acehness asylum seekers and victims of trafficking were detained at the detention centres. Suhakam observed that there were delays in deportation of detainees, in some cases almost for a year. The Immigration officer cited various reasons for the delay in deportation such as processing of travel documents, the holding of witnesses for court cases and the change of entry points in the home countries. During the inspection two Indian nationals approached the Commissioners to assist in expediting repatriation. The nationals were seen crying and pleading for assistance.
55. In 2002, the Prison Department commenced taking over administrative and management functions of detention camps from the Immigration Department⁴⁷. Pursuant to the Prison Act 1995 and Prison Regulations 2000, living conditions in Immigration detention depots should comply with lock up rules. Migrant rights activists are of the view the Prison Departments efforts to improve living conditions in detention centres are hampered due to lack of resource.

Amnesty

56. In 2002 prior to the coming into force of the amendments to the Immigration Act 1959/63 in August, the government granted an amnesty to an estimated 600 000 undocumented migrants to return to the country of origin without prosecution. The amendments to the Immigration Act carry stringent punishments for both undocumented migrants and employers who harbour undocumented migrants. As a result of the amnesty between 23 April 2002- 31 July 2002 a total of 429 020 undocumented migrants returned voluntarily to their respective countries⁴⁸.

confiscated by the camp authorities. In May 2005, the Immigration authorities released Ki Tho together with three other detainees to UNHCR's care. Social Activist found the four refugees had symptoms such as gastrointestinal disturbances, swelling caused by excessive collection of fluid in various parts of the body, inflammation and degeneration of nerves and muscular weakness. These symptoms are similar to those of beriberi, a disease rare in Malaysia, caused by improper diet and the poor absorption and utilization of Vitamin B1; Fauwaz **Abdul Aziz**, **Jul 9, 05**. www.Malaysiakini.com, **"It's all dandy at Lenggeng"**, The Prison Department has refuted Khi Tho's account and has advised detainees to lodge a complaint to the Immigration Depot's management of incidence of abuse or unclean food.

⁴⁵ Prison Department Malaysia, Depot Tahanan Pendatang Tanpa Izin www.prison.gov.my/melayu/carta/depot.htm visited 20 May 2005

⁴⁶ Malaysiakini, 22 September 2003 "Suhakam: Conditions in Immigration Holding Pens less Than "Decent", Migrant Workers Access Denied, Tenaganita, Kuala Lumpur pg. 52.

⁴⁷ Prison Department Malaysia, Depot Tahanan Pendatang Tanpa Izin www.prison.gov.my/melayu/carta/depot.htm visited 20 May 2005

⁴⁸ Dato Othman bin Talib, Royal Malaysian Police, MTUC/ILO Regional Workshop On Migrant Workers in Malaysia, 18-19 April 2005, Petaling Jaya.

57. In September 2002, 220 700 Indonesian migrant workers had been either deported or returned voluntary to Nonhuman, a small island in East Kalimantan, Indonesia. Nunukan is a main entry point for Indonesian migrant workers to East Malaysia. The process of mass repatriation and deportation of undocumented migrant workers involved staying in camps provided by the Indonesian government and voluntary agencies while waiting for their passports to be processed in order to return Malaysia legally.
58. Some migrants were stranded on the island and were unable to return to their villagers due to lack of funds. An estimated 30 000 migrants were stranded in the Nunukan island. The health of migrants declined due to overcrowding, inadequate shelter, poor sanitation, shortage of food and water. There were reports of outbreak of disease. The only community health centre in the island was equipped with 10 beds, 8 doctors and 22 medical staff and was unable to provide medical assistance to thousands of people⁴⁹. An estimated 70 migrants died from illness caused by respiratory problem and diarrhoea and many others became ill.
59. In October 2004 the government granted an amnesty to an estimated 1.2 million undocumented Indonesian migrant workers and 300 000 other nationals. A total of 382 082 undocumented migrants returned to their respective countries between 29 October 2004 – 28 February 2005⁵⁰.
60. The Indonesian embassy received complaints from migrants for unpaid wages involving 51 local employers amounting to RM 2.4 million⁵¹. Complaints were filed in the labour department for unpaid wages against errant employers. An estimated 27 000 of the migrants returned legally. As a result of slow processing of travel documents in Indonesia, others returned with social visit pass and are said to be working in the manufacturing, services and plantation sectors in the states of Sabah and Sarawak. These workers have overstayed their social visit pass rendering them irregular.
61. Better planning and co-ordination could have saved travel, administrative and delayed work costs for employers and unnecessary anxiety among migrant workers. It is clear that the country needs more workers in the plantation and construction sectors. It would have been practicable if undocumented migrant workers were legalised in the country as opposed to repatriating and bringing them back. On the other hand the amnesty required undocumented migrants to return to the country of origin in furtherance of the aim to eliminate irregular migration. The priority to eliminate irregular migration is seen as an overriding factor although the country faced labour shortage.

International Framework

62. Malaysia's Foreign Affairs Ministry's website outlines its commitment to the promotion and protection of human rights. It states, "Malaysia's commitment is reflected in the Federal Constitution, setting up of a Human Rights Commission (SUHAKAM) and is signatory to five UN Conventions relating to human rights among others (i) Convention on the Rights of the Child (CRC) and (ii) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)."
63. Malaysia is not a signatory to the 1951 Convention Relating to the Status of Refugees/1967 Protocol, Convention on the Rights of Migrants and Members of their families 1990 and UN

⁴⁹ ACT International News Release, Geneva Sept 18 2002 "Indonesia: Displaced migrant workers stranded" http://act-intl.org/news/dt_nr_2002/nrindo0102.html visited 1 May 2005

⁵⁰ Dato Othman bin Talib, Royal Malaysian Police, MTUC/ILO Regional Workshop On Migrant Workers in Malaysia, 18-19 April 2005, Petaling Jaya.

⁵¹ Beh Lih Yi, Malaysiakini 23 Mar 2005 "51 firms owe illegal workers RM 2.4 million wages.

Convention on Transnational Organized Crime/ 2000 Protocols on Human Trafficking and Smuggling.

64. In 2004 Suhakam held a forum on trafficking in Women and Children and urged the government to ratify the UN Protocol to Prevent Suppress and Punish Trafficking in Persons, 2000. It stated “ the benefits of ratification will enable the development of a comprehensive plan of action involving government agencies, NGO, corporate sector and the Community to effectively prevent, combat and promote and facilitate a global network on information sharing on trafficking⁵².”
65. Despite Malaysia’s stated “commitment to human rights” the government is reluctant to rectify UN Conventions citing that we have sufficient local laws to address issues surrounding human rights issues. Also it perceives that adoption of UN conventions amounts to embracing western concept and rules which is antithetical to local culture and practices.
66. The Courts in Malaysia have taken a restrictive approach to the use of international convention in the local jurisprudence. Rights or principles in a convention or treaty has no application and cannot be incorporated in local jurisprudence unless an Act of Parliament decrees the same⁵³. However, such instruments are persuasive as long provisions of the instruments cited do not contradict any express statutory provisions⁵⁴.
67. The Federal Court reiterated this position in the case of Mohamad Ezam v Inspector General of Police⁵⁵. The apex courts decision disregards Section 4(4) Human Rights Commission of Malaysia Act 1999 which states regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution.

⁵² SUHAKAM “Trafficking In Women and Children” Report 2004, Kuala Lumpur p 49.

⁵³ Merdeka University Berhad v Govt of Malaysia [1981] CLJ 191 cited by Advocate & Solicitor Amer Hamzah Arshad in his paper “The Protection of refugee children in Malaysia: Wishful Thinking or Reality?.”

⁵⁴ Sagong Tasi & Ors v Kerajaan Negeri Selangor & Ors [2002] 2 CLJ 543 cited by Advocate & Solicitor Amer Hamzah Arshad in his paper “The Protection of refugee children in Malaysia: Wishful Thinking or Reality?.”

⁵⁵ [2002] 4 MLJ 449

PART TWO

HUMAN SMUGGLING

68. This part looks at the human smuggling patterns in Malaysia, services provided by syndicates for profit and the domestic and regional efforts in combating human smuggling.

Patterns of human smuggling in Malaysia

69. There are various definitions of human smuggling. The Palermo Protocol describes smuggling as the “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Article 3).
70. In Malaysia, the term “trafficking” and “smuggling” is used interchangeably, to refer to an irregular method of commercially assisted border crossing. Among the terms used to refer to a smuggler are “middlemen”, “brokers”, “agents”, “snakeheads”, “tekong darat” (anchormen based on land) and “tekong laut” (anchormen based at sea). Agents or syndicates operating in the region provide a variety of service in the migration process such as transport, employment, obtaining “legal” documents, extension of visa, and supply of foreign workers to local employers, food and shelter. In some cases migrants from conflict regions of South East Asia refer to Agents as “good men who assist their travel to safety.”
71. Agents are known to assist in the transportation of migrants by sea, land and air to avoid Immigration checkpoints. The Immigration department reports that syndicates search for new routes after the authorities discover other routes. The police department’s security surveillance at unauthorised entry points led to the detection of 9396 unauthorised boat landings for the period between 1992 to April 2005⁵⁶. The police arrested 29 059 persons for illegal entry⁵⁷. For the same period 228 smugglers were arrested⁵⁸.
72. Agents operating along the Straits of Malacca between Malaysia and Indonesia use passenger boats and fishing trawlers to transport migrants illegally from twelve exit points located in the Indonesian islands of Sumatra, Batam, and Rapat⁵⁹.
73. Agents operating in the area are familiar with routes and are said have local contacts in Malaysia. In some cases migrants are hidden in containers. The vessels transport groups of 5-15 migrants and embark along the western coastline of the Peninsula between 1 am-4 am to avoid detection. It is believed that each migrant pays between RM 150.00 – RM 500.00 for transport service. The agents’ service ends at the point of the migrants’ embarkation on the peninsula’s shore. In cases involving Malaysian agents the service extends to finding employment. Migrants are “supplied” to Malaysian employers in the various work sectors⁶⁰. In some cases agents operating between

⁵⁶ Statistic’s provided by the Enforcement Division, Internal Security and Public Order Department. Royal Malaysia Police

⁵⁷ See Appendix 1. Summary of Statistic’s of Unauthorized Landings and Arrest between 1992-April 2005 pursuant to Special Security Operation Code Named Nyah 1, Enforcement Division, Internal Security and Public Order Department. Royal Malaysia Police.

⁵⁸ See Appendix 2. Summary of Statistic’s of Arrest of Employers and Smugglers between 1992 – April 2005 pursuant to Special Security Operation Code Named Nyah 1, Enforcement Division, Internal Security and Public Order Department. Royal Malaysia Police.

⁵⁹ Information provided by the Enforcement Division, Internal Security and Public Order Department. Royal Malaysia Police

⁶⁰ Ibid.

Malaysia, Thailand and Indonesia are said to have arrangements with Malaysian employers to collect wages directly until full settlement of the agreed fees for services rendered.

74. The security system in the northern state of Perlis that borders Thailand includes fencing of the border and a CCTV monitoring system to detect illegal movement of people.
75. Syndicates are reported to be involved in “assisting” migrants from Thailand, Myanmar, Cambodia, Laos, Nepal and Bangladesh and a small number from other countries to cross the border illegally by land from Thailand to Malaysia⁶¹. In some cases migrants are hidden in car boot, bus baggage compartment or accompanied by foot to cross thick jungles. Sampan or boats are used to cross rivers. Agents are known to operate from thirty-one exit points located in South Thailand. Agents are known to assist migrants to cross the border illegally between 1am-4pm into Malaysia for a fee between RM 50.00 - RM 800.00.
76. Agents take advantage of the shared borders between Malaysia and Thailand. Malaysians and Thai nationals trade daily in Golok, a market places located in South Thailand. The market place in Golok is separated by a river. The journey across the river takes less than five minutes. Source’s state agents are seen at the Thailand side of the river border and offer services to transport people illegally to Malaysia.
77. In Sabah migrants from Indonesia cross the borders to Malaysia illegally with or without the assistance of agents. Migrants from Indonesia enter unlawfully from three exit points of the island of Nunukan, Sebatik and Tarakan in Kalimantan, Indonesia. Agents assist migrants from Philippines from eleven exit points in the islands of Sulu and Balawan of South Philippines. Migrants are transported in small boats and boats known as “Barter trader”.
78. In Sarawak, the state has identified 72 smuggling routes, known as lorong tikus or "rat lanes". The “rat lanes” are cleared by settlers who live along the border and people involved in illegal logging activities. There is also movement of people across the border on foot from Kalimantan, Indonesia without assistance of agents. The border is not fenced but marker stones are used as indicators The wide border coupled with limited resources to fence the border poses a problem to effectively combat smuggling activity.
79. In Sarawak the security measures taken to prevent illegal entry includes the creation of customs and Immigration posts, installation of a fencing system in a some parts of the border and increase in the number of General Operations Force personnel stationed at the border⁶².
80. Syndicates are involved in “facilitating” the use of forged travel documents and stolen passports to deceive immigration officials.
81. Forged Malaysian passports are believed to be sold for RM 50 000 each to international syndicates. Syndicates involved in forgery, theft and sale of travel documents take advantage of the Malaysian passport which allows entry to all countries except Israel⁶³.
82. In June 2005 Customs officers at the cargo section of the Kuala Lumpur International airport detected a package originating from Mexico addressed to a Korean women residing in Kuala Lumpur. The package contained 18 South Korean passports that had been tampered with and a fake passport. Another box from Beijing contained three South Korean passports hidden inside a magazine. The South Korean Embassy stated that all but one passport carried details of the original passport holders but the photos had been substituted with persons believed to be

⁶¹ Ibid.

⁶² New Straits Times 1 April 2005

⁶³ The Star June 13 2005 “Fake Malaysian passports popular, sell for RM 50 000.”

Chinese nationals. All the passports were endorsed with KLIA entry stamp dated April 2005. Air tickets stating the names of the respective passport holders were enclosed for the route originating from Kuala Lumpur via Singapore to Cape Town⁶⁴.

83. There are allegations of Syndicates being linked to enforcement officers and allegations of corruption among law enforcement personnel.
84. In December 2003/2004, the police cracked a human smuggling syndicate including Malaysian Airlines and Malaysian Airports officials.
85. In June 2005 Immigration officers searched a premises occupied by a “snakehead” suspected of being involved in smuggling activities. Large quantity of immigration forms were found in the premises leading to the Immigration Departments’ probe to determine if the agent was linked Immigration officials. The “snakehead” is suspected of rendering services to (i) local employers in the employment of foreign workers and (ii) foreign workers in processing the extension of visa involving nationals from Shanghai, China and Chennai, India. The snakehead was detained pursuant to the Immigration Act ⁶⁵.

Domestic and Regional efforts to combat Human Smuggling

86. Malaysia criminalizes people smuggling, corruption⁶⁶ and money laundering. The Immigration Act provides that (i) the act of smuggling people committed directly by a person or body corporate or the act of organising and directing other persons to commit the same acts or by a person who has been proved to have acted jointly with one or more person is punishable⁶⁷; (ii) producing fraudulent travel or identity documents is punishable⁶⁸. The penalty is imprisonment and fine and a maximum of six strokes of whipping.
87. There is no indication if the penalty is a significant deterrent for human smugglers when weighed up against the huge financial incentives. Enforcement agencies take more action against migrants as immigration offenders as opposed to human smugglers
88. Agents have been prosecuted for human smuggling between the borders of Malaysia and Singapore.
89. A Malaysian driver was charged for smuggling Thai, Myanmar and Chinese nationals from Singapore to Malaysia hidden in a car boot. The foreign nationals paid RM500 to the agent for transport services. The foreign nationals were charged for illegal entry into Malaysia⁶⁹.
90. A Malaysian snakehead was prosecuted in Singapore for smuggling Myanmar, Nepal, Chinese and Bangladesh nationals from Malaysia to Singapore. The service rendered by the snakehead is transport from Malaysia to Singapore by boat for a fee of S\$2000 (US\$ 1200). However “customers” were dumped at Singapore’s northern coastline and made to swim about 2 kilometres (1.2 miles) to safety. The Singapore Court sentenced the snakehead to a five-year jail term and twenty strokes of the cane for people smuggling. The Court observed that the

⁶⁴ The Star 11 June 2005 “ Human trafficking syndicate exposed.”

⁶⁵ The Malay Mail Online 20 April 2005 “Human smuggling ring may have links with Immigration Officers”

⁶⁶ Sections 161-171 Chapter IX Offences By, Or Relating to Public Servants, Penal Code.

⁶⁷ Section 55A. Immigration Act 1955/63 Conveying a person to Malaysia contrary to Immigration Act

⁶⁸ Section 55D. Forgery or alteration of endorsement or document.

⁶⁹ Malaysiakini, Mar 11 03 “Five immigrants travel in car boot to sneak across from S’pore”

snakehead had taken advantage of the foreign nationals' vulnerabilities and subjected them to exceptional risk by forcing them to swim in the rough sea conditions to safety⁷⁰.

91. The transnational nature of human smuggling requires states to cooperate regionally to effectively combat crimes related to human smuggling and provide protection for victims such as refugees. Malaysia participated in the following regional meetings on international migration and human smuggling but to date has failed to adopt recommendations related to the protection and /or humanitarian assistance to vulnerable migrants.
92. **The Bangkok Declaration on Irregular Migration in 1999** addressed the question of international migration, with particular attention to regional cooperation on irregular/undocumented migration. Among others the participating countries respected the sovereign rights of individual member state to safeguards its borders and the obligations of the transit and destination countries to provide protection and assistance to migrants where appropriate in accordance with national laws.
93. The recommendations include return of irregular migrants without delay. The process of return should be performed in a humane and safe way. Irregular migrants should be granted humanitarian treatment including appropriate health and other services, while their case of irregular entry is being handled by law. Any unfair treatment towards them should be avoided.
94. **The Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime 2002**, addressed the growing scale and complexity of illegal movement of people and the role of human smuggling syndicates. The operation of syndicates undermines the rule of law and the institutional framework that is essential for sustainable development of participating countries. The other dimension to human smuggling and trafficking of persons, is the human rights of smuggled and trafficked person specifically women and children. Participating members acknowledged that smugglers fed on the aspirations of people and frequently infringed basic human rights and freedoms. The lucrative activities involved low risk to smugglers but endangered people's lives.
95. Therefore domestic efforts and regional cooperation is vital to effectively combat human smuggling. The conference recommended that states provide appropriate protection and assistance to the victims of traffickers of people within the framework of their international obligation and domestic law. All States should provide protection and find solution for refugees. States should also consider the benefits of signing and ratifying the United Nations Convention Against Transnational Organized Crime/protocol to prevent, criminalize and combat human smuggling and trafficking in persons.

⁷⁰ The Straits Times Singapore, 5 July 2004 "Snakehead responsible for 80% of JB-S'pore people smuggling caught."

PART THREE

96. This section looks at the vulnerability and challenges to human rights of men, women and children in the process of migration. Specifically the impact of Malaysia's oppressive and unjust immigration controls on refugees, trafficked victims and economic migrants.

TRAFFICKED VICTIM AN "ILLEGAL IMMIGRANT"

97. The Immigration Act does not distinguish between trafficked or smuggled persons. Trafficked victims of foreign nationality arrested during police anti vice raids on brothels are subject to arrest, charge and deportation pursuant to the Immigration Act 1959/63 for overstaying in the country or unauthorised entry. In Malaysia there is no comprehensive legal framework and/or structures to address the issues of trafficking coupled with police investigative methods to detect possible trafficked victims leads to victims being revictimised as criminals pursuant to the Immigration Act. Victims are detained as "illegal immigrants" causing further trauma and are deported without regard to their exploitation and risks that they may be exposed to if returned to the country of origin⁷¹.
98. Suhakam's report on Trafficking In Women And Children observed that a large number of women of foreign nationality are held in Kajang prison and expressed its concern that "only the victims were punished mainly for not possessing valid stay documents⁷²." Victims who escape do not file a complaint against their exploiters or seek protection from local enforcement agencies for fear of being detained as an "illegal immigrant⁷³."
99. The Anti Vice Unit, of the Anti Vice, Gaming and Secret Society Division of the Police Criminal Investigation Department has the task of addressing the issue of trafficking. The Police Department categorizes trafficked persons as:
- "genuine trafficked victims and those of "self trafficked" or voluntarily trafficked i.e. those people who knowingly allow himself or herself to be trafficked for economic reasons."
100. In cases involving self trafficked or voluntarily trafficked persons, the person is informed by the agent and has knowledge of the nature of employment in the country of destination prior to arrival. In most cases the nature of employment involves sex trade⁷⁴. The cases of self trafficked persons are minimal and there are no reported cases of men being trafficked. The police provide protection based on humanitarian values for trafficked victims, if the police investigations show evidence of a genuine trafficked victim⁷⁵. "Victims are sent to the relevant embassy, prison or detention camp for deportation without being charged for offences pursuant to the Penal Code and/or Immigration Act⁷⁶. Trafficked victims placed in prisons are segregated from other offenders. Deportation shall take place as soon as investigation and travel documents are ready.

⁷¹ Trafficking In Women And Children, Report of the Human Rights Commission of Malaysia (SUHAKAM) Kuala Lumpur Malaysia. 2004 Pg 40.

⁷² Trafficking In Women And Children, Report of the Human Rights Commission of Malaysia (SUHAKAM) Kuala Lumpur Malaysia. 2004 Pgs i & ix.

⁷³ Trafficking In Women And Children, Report of the Human Rights Commission of Malaysia (SUHAKAM) Kuala Lumpur Malaysia. 2004 Pg 40.

⁷⁴ Interview with ASP Norani Saad , Anti Vice and Trafficking in Women Unit, Criminal Investigation Department, Bukit Aman, Royal Malaysia Police

⁷⁵ Interview with ASP Norani Saad , Anti Vice and Trafficking in Women Unit, Criminal Investigation Department, Bukit Aman, Royal Malaysia Police

⁷⁶ Interview with ASP Norani Saad Anti Vice and Trafficking in Women Unit, Criminal Investigation Department, Bukit Aman, Royal Malaysia Police

Due care such as food and medical treatment is provided for the welfare of the victims pending deportation⁷⁷.”

101. Police investigations to detect genuine trafficked victim is hampered by the following factors⁷⁸: “(i) difficulty in differentiating between illegal immigrants and trafficked persons due to the large influx of illegal immigrants; (ii) non existent of mechanisms to detect illegal immigrants and trafficked persons; (iii) fear that self trafficked and voluntarily trafficked persons would dispute their involvement in vice activities and request for protection accorded to genuine trafficked persons and (iv) non existent of mechanisms to ensure protection accorded to trafficked victims is not abused by other categories of illegal immigrants.”
102. The police department acknowledges that the investigation process lacks the required mechanisms to detect possible trafficked victims, The Police Department is committed to taking steps to train officers in accordance with the department’s stated policy of zero tolerance for those involved in trafficking.

ECONOMIC MIGRANTS

103. There are estimated 1.5 million registered migrant workers as at May 2005⁷⁹ constituting 12 per cent of the total employment in the country⁸⁰. The four sectors that hire migrant workers are the plantation, (both skilled and unskilled) manufacturing, construction, services and domestic help⁸¹.
104. Source countries for migrant workers are Bangladesh, India, Pakistan, Nepal, Philippines, Thailand, Vietnam, Cambodia and Indonesia and domestic help from Indonesia, Philippines and Thailand⁸². Migrant workers are required to attend a two-week course on Malaysian laws, language and culture before they can be issued with a visa⁸³. Malaysia has a policy pertaining to family migration, Clause viii) Conditions for issuing Visit Pass (Temporary Employment) of the guidelines for the recruitment of foreign labour prohibits the worker from bringing his family to reside in the country⁸⁴. Malaysian government’s revenue from migrant workers payment of levy and visa fees is US\$320 million⁸⁵.
105. There are an estimated 1.3 million undocumented migrants in the country. Economic migrants make up the largest group of undocumented migrants. Undocumented migrants and registered migrant workers are vulnerable to exploitation and immigration controls. Employers take advantage of the conditions of the work permit which is non transferable. The legal status of a migrant worker is subject to the conditions of his work permit. A registered migrant worker may

⁷⁷ Interview with ASP Norani Saad Anti Vice and Trafficking in Women Unit, Criminal Investigation Department, Bukit Aman, Royal Malaysia Police

⁷⁸ Interview with ASP Norani Saad, Anti Vice and Trafficking in Women Unit, Criminal Investigation Department, Bukit Aman, Royal Malaysia Police

⁷⁹ Berita Harian 13 May 2005 “382 000 kembali secara haram”
www.mohr.gov.my/mygoveg/extras/issuebi.htm#c15a visited 23 May 2005

⁸⁰ Foreign workers play major role “Business Times” Nov 18 2004
www.btimes.com.my/Current_News/BTimes/Thursday/temp/20040910143347/Article/

⁸¹ Mohd Hafiz Lo Bin Abdullah Immigration Department Malaysia “Immigration Law- Rights and Responsibilities of Migrant Workers” MTUC/ILO Regional Workshop On Migrant Workers In Malaysia 18-19 April 2005 Petaling Jaya.

⁸² Mohd Hafiz Lo Bin Abdullah Immigration Department Malaysia “Immigration Law- Rights and Responsibilities of Migrant Workers” MTUC/ILO Regional Workshop On Migrant Workers In Malaysia 18-19 April 2005 Petaling Jaya.

⁸³ “Foreign workers required to attend cultural course,” The Straits Times 5 Dec 2003, Malaysia: Foreign workers required to attend cultural course, 5 Dec 2003 www.asianlabour.org/archives/000181/html visited 30 Jun 2004

⁸⁴ Recruitment of foreign labor www.imi.gov.my/framenewbi.htm visited 3rd July 2004

⁸⁵ “Malaysia remains land of opportunity for Indons”, Sunday Star 14 Nov. 2004 pg. 27

be rendered irregular if he is in breach of the working conditions of the work permit such as working in a sector other than stated in the work permit.

Legal Protection for registered Migrant Workers

106. There is no legal protection for undocumented migrant workers. Laws provide equality of treatment for local workers and registered migrant workers. Legislation and the contract of service guarantees the basic labour rights of registered migrant workers. There is limited legislative protection for domestic workers. Legal protection for registered migrant workers include terms and conditions of employment such as wages, hours, holidays, termination of contract of service; non discrimination, freedom of association and access to grievance and redress mechanism. The contract of service stipulates terms and conditions on duration, wages, work shift, days off, sick leave, medical fees, payment of levy, visa, medical and travel. The laws that provide equality of treatment and opportunity for registered migrant workers are as follows:

- Employment Act 1955
- Industrial Relations Act 1969
- Trade Unions Act 1959
- Workmen's Compensation Act 1952
- Occupational Safety and Health Act 1994

107. A Memorandum of Understanding was signed between Malaysia and Indonesia in 2004, to regulate recruitment procedures for foreign contract labour. The MOU while setting more rigid recruitment standards failed to establish a minimum standard vis-à-vis working conditions of migrants namely, a defined minimum wage, hours of work, regular payment of wages, rest days and safe work place. The shortcomings include the exclusion of domestic workers in the agreement. This form of control makes it difficult for workers to escape abusive employers and/or to negotiate better working conditions.

Working conditions of undocumented migrant workers

108. These workers work under exploitative conditions namely, lower wages, long working hours, no rest days, non payment of social security benefits (contribution by employers which is mandatory for local workers)⁸⁶ and poor conditions of work. Typically, these kinds of work are considered dirty, dangerous and difficult by Malaysians. According to migrant rights activist there is an unstated policy to import migrant workers for particular occupations or occupations that regular Malaysian workers shun or avoid because of low pay, poor working conditions, and the reputation of the workers in that occupation⁸⁷.

109. Migrant rights activist state that the working conditions of documented migrant workers are similar to undocumented workers. There is non compliance of minimum working standards. In the cases of Chin Well (Penang High Court C.S. No. 22-593-2002) and Fudex (Melaka High Court C.S. No. MT 2-22-46-2003)⁸⁸, claims of breach of contract there was evidence of:

⁸⁶ Sim Leoi Leio, "Stop 'exploiting' foreign workers factories told," The Star, 29 July 2004, Asian Labour News, www.asianlabour.org/archives/002339.php visited Oct 2004>

⁸⁷ Malaysia Migrant Workers Access Denied, "Introduction", Tenaganita, Kuala Lumpur, pg. 3.

⁸⁸ Supra 28 Leela Chelvarajah, "Perspective of Foreign Workers and Their Rights and Employment in Malaysia pg. 2.

110. non supply of protective equipment such as long sleeved gloves and safety boots for workers. Workers suffered from serious burns on their arms and scalding on their feet due to unsafe working conditions. The injury was caused by the use of boiling water to wash the floor at the end of the shift. Other poor work conditions were the refusal to let the workers obtain medical examination from the company panel doctors for employment injuries, deplorable hostel conditions, total polarisation from local employees, non payment of benefits given to other workers, condonation of abuse of the workers by local employees and victimisation by the workers' supervisors with no recourse to grievance procedure.

Labour Rights and Immigration Control

111. The laws of the country do not provide for special complaint and redress mechanisms for migrant workers. However, the Employment Act 1955 and the Industrial Relations Act 1969 provides for equal access for migrant workers to grievance process. The number of complaints filed by migrant workers and cases pursued are negligible. There are many cases but it's not reported because migrant workers fear repercussions from the employers, inability to stay in the country until the final disposal of the case. Language barrier, the costs of lawyers, difficulty in finding a lawyer who will render pro bono services, cultural disorientation and no access to information of their right to redress are some of the factors why migrants do not go to court⁸⁹.

112. In February 2005, 54 Indonesian illegal migrant workers filed a claim at the Selangor Labour Court for unpaid wages for the amount of RM 150 000 against their employer Sri Mega Jaya. The claim was for work carried out in the construction of a condominium project in Damansara Damai, Selangor. Upon filing the complaint, the workers were forced to return to Indonesia before the end of the amnesty period to avoid prosecution for illegal entry. The Labour Court accepted the workers complaint for unpaid wages although illegal migrant workers in Malaysia have no recourse to the right to redress. After hearing the matter, the Court dismissed the claim on the ground that the court is not bound to consider a claim filed by workers who had entered the country illegally.

113. Lawyers commenting on the court's decision said "the court recognized the right to redress of illegal workers at the first instance when the complaint was registered and fixed for hearing. However, the claim was dismissed on technical grounds of illegality pursuant to the Immigration Act. In dismissing the claim the court failed to consider the merits for unpaid wages for work done. The immigration Act effectively denied the right to redress for workers. Further, the Court's has set a precedent for employers to hire illegal workers and not pay their salary as the workers have no recourse to the right to redress⁹⁰."

REFUGEES

114. Malaysia is not a signatory to the **1951 Convention Relating to the Status of Refugees/1967 Protocol**. It has no legal framework, guidelines or administrative procedures to address the right to seek asylum or to provide humanitarian assistance or protection of refugees. It is estimated that there are 40, 000 people of concern to UNHCR in the country. This includes, 20 000 Acehness, 10 000 Rohingas from Northern Rakhine State, Myanmar and 10 000 persons from

⁸⁹ Ibid. Pg. 4

⁹⁰ Pauline Puah, Malaysiakini June 9 2005 "Illegal status: Court dismisses Indon workers' wage claim."

minority groups in Myanmar. The total estimated people of concern to UNCHR office includes 6281 females and 4600 children as of February 2005.⁹¹

115. Asylum seekers and refugees are viewed as prohibited immigrants as per Malaysian immigration laws. This means the asylum seekers and refugees who illegally enter and stay and are subject to the threat of arrest, detention and deportation contrary to international law. People of concern and their children have no excess to employment, education and health care which further isolates them.
116. The UNCHR undertakes registration, determination of refugee status and resettlement of refugees and plays an important role in carrying out negotiations and discussions with government agencies in order to respond to the vulnerabilities of refugees. The government is urged to assist refugees by providing employment and education opportunities and excess to health care. There is also a constant appeal to enforcement agencies and the judiciary to approach matters relating to refugees on humanitarian grounds. Despite the government's assurance that refugees will not be detained during the recent crackdown on illegal immigrants, arrest, detention, punishment of refugees continued. In some cases UNHCR's protection letters were not recognised by enforcement officers. Refugees who were wrongfully arrested and/or detained were released with the intervention of UNHCR.
117. In June 2005, Minister in the Prime minister's Department Datuk Seri Mohd Nazri Aziz, who sits on the national security committee, said the government is considering issuing identification cards to refugees to enable them to gain temporary employment and have access to healthcare and education. The minister further added that "absorbing refugees into the local workforce will help ease labour shortage in the country and prevent refugees from contributing to social problems. The Minister noted that some refugees are known to have lived in Malaysia for the last thirty years while some were born in Malaysia, therefore denying them identification, education or employment will create social problems⁹²." The Minister had made a similar commitment in October 2004 to issue Identity Card to Rohingas to facilitate job opportunities but no steps had been taken to implement the process.

Living Conditions

118. Refugees live in inhabitable huts or shacks in suburban areas, plantation or squatter settlements with no electric, water or sanitary system. Their settlements are located in rural and isolated areas and premised on the need to avoid arrest, punishment, detention and deportation⁹³.
119. In December 2004 Suhakam in addressing the issues and problems related to refugees in Malaysia noted that majority of refugees live in "terrible squatter areas without basic facilities and further suggested that refugees should have the right to employment, health and education⁹⁴.

⁹¹ See Appendix 4 & 5 for Summary of Female and Children of Concern to UNHCR

⁹² The Star 22 June 2005 "Govt considering steps to allow refugees to work."

⁹³ Interview with Refugee Support Group

⁹⁴ Roshan Jason, Dec 14 04 www.Malaysiakini.com "Allow refugee to work"

Threat of Arrest, Charge, Detention and Deportation⁹⁵

Charge

120. The Attorney General's Chambers proffers charges against refugees for unlawful entry pursuant to the Immigration Act. It does not accept UNHCR's documentation of refugee status of a person unless there is evidence of confirmation of resettlement in order for the charges to be withdrawn.

Detention

121. In March 2005 pursuant to the crackdown on illegal immigrants 599 persons of concern were detained and 130 were prosecuted despite being in possession of UNHCR protection documents.⁹⁶

Muhammad Nurul, fled Aceh to Malaysia in August 2003. His name was on the Indonesian army's 'wanted list' for organizing a massive pro-democracy demonstration. In March 2005 he was detained by immigration officers during a nationwide crackdown on illegal immigrants. The arresting officer dismissed his explanation of refugee status and rejected UNHCR protection letter. The officer referred to UNHCR protection letter as 'meaningless' in this country. Muhammad Nurul was detained for three months in the immigration detention centre for illegal entry. He was detained in the Damansara Immigration Centre lock-up for 23 days. He was detained for two weeks in a holding cell measuring 4 x 6m. The cell was overcrowded with over 60 inmates. Thereafter he was detained for nine days in solitary confinement. Subsequently he was detained in Semenyih detention centre for over a period of two months. There were 400 inmates in a cell block measuring 20 x 30m. He suffered from bouts of fever, lack of proper food and medical attention. Other detainees suffered from more serious illnesses. He witnessed a Nepalese detainee die of poor health. Muhammad Nurul has since been relocated to the United States.

Deportation

122. The Myanmaris are deported to Thailand for onward deportation to Myanmar in breach of the principle of non refolement. These detainees are further detained in Thailand's detention camps for deportation to Myanmar. Sources state that a "successful deportation" means that a detainee is deported to Myanmar without the role of agents who assist in securing their release from detention camps. Agents secure the release of detainees from detention camps. Also, boats that transport Myanmar refugees from Thai detention camps are returned to Thailand with refugees on board. Thus refugees are not sent to Myanmar but are brought back to Thailand with help of agents. In other cases Malaysia deports Myanmar nationals to Southern Thailand, which is a conflict zone thus further endangering the life of refugees. A similar reality exists in the case of the Acehnese. The deportation exercise does not serve the purpose of controlling the influx of migrants through unlawful channels but encourages agents, middlemen and brokers to assist transport the return of migrants from Indonesia and Thailand
123. The unhygienic conditions and long detention period are some of the reasons that forces refugees to request for repatriation. In other cases detainees are said to have requested for "voluntary repatriation".
124. The principle of non refolement **in Article 33 of the Refugee Convention** has been considered by certain scholars as a rule of customary international law. The principle is binding on all states

⁹⁵ Sections 31, 32 & 33 Immigration Act 1959/63 Part V Removal from Malaysia.

⁹⁶ See Appendix 6 Detention Statistics (by Status & Demographic)

without exception and regardless of whether the state party is a signatory to the refugee convention. Malaysia should fulfil its international obligations and cease deportation of refugees to regions that threaten their safety and life.

Child Refugee & CRC

125. Malaysia is a signatory to the CRC. However it has not fulfilled its obligations to enact laws or amend existing legislations to incorporate provisions relating to the protection of child refugees⁹⁷. Appropriate protection or humanitarian assistance for child refugees to have access to health care and education is non-existent.
126. Child refugees are denied the right to education. Malaysian laws and regulations allow for non-citizen children to be admitted in local schools with a proviso that a student pass is issued by the Immigration Department⁹⁸. This is possible through Article 5 of the Education of Pupils to Schools, Keeping of Registers and Conditions under which pupil may be retained in Schools, Regulation 1998. However, the state chooses to criminalize the child refugee for illegal entry and effectively denies their right to education.
127. In October 2004 UNHCR began negotiations with the Malaysian government to allow an estimated 3,000 child refugees to have access to local schools⁹⁹. Suhakam has suggested that “Children should be given the opportunity to receive education in order for them to achieve a better quality of life¹⁰⁰.”
128. Refugee children are subject to arrest and detention for illegal entry pursuant to the Immigration Act. In September 2004, Suhakam found 43 children were detained at the temporary immigration detention centre in Menggatal, Sabah¹⁰¹. In May 2005 according to UNHCR 42 child refugees were detained together with their parents in 14 immigration detention centres. There were thirty-nine boys and three girls, and a majority of them were between the ages of 13 and 17 and the youngest was a Rohingya child less than three-years-old.
129. Of the 42 children detained, 33 were Burmese Chins, three Rohingyans and the rest were Acehnese and others. The longest child resident in an immigration detention centre was detained for nine months while an Acehnese woman had delivered a baby under detention in 2004 but has since been released.
130. Their detention contravenes the CRC and UNHCR’s Guidelines on Refugee Children, which prohibits detention of asylum-seekers who are minors. The detention of children in detention camps may have a serious impact on their physical and mental health. Detention should be last resort where there is threat to the life or safety of the child refugee. In the case of Malaysia, it does not appear that the refugee child is in any threat or danger.
131. Suhakam in commenting on the plight of detained child refugees, said “it was not a place that children should be found in, seeing these children sleeping on nothing but a sheet of cloth on the cement floor, sniffing through their running noses was very upsetting.”

⁹⁷ Article 22 read together with Article 3 and 4 of CRC, Amer Hamzah Arshad, Advocate & Solicitor “The Protection of refugee children in Malaysia: Wishful Thinking or Reality?”

⁹⁸ Amer Hamzah Arshad, Advocate & Solicitor “The Protection of refugee children in Malaysia: Wishful Thinking or Reality?”

⁹⁹ Pauline Puah Oct 1, 04 www.Malaysiakini.com

¹⁰⁰ Roshan Jason, Dec 14 04 [Malaysiakini](http://www.Malaysiakini.com) “Allow refugee to work”

¹⁰¹ Fauwaz Abdul Aziz 27 May 2005 www.Malaysiakini.com “42 child refugees in M’sian detention camps”.

132. As a signatory to the **Convention on the Rights of the Child 1989**, Malaysia has an obligation to protect child refugees and provide humanitarian assistance for their health care and education.
133. The Malaysian government should not continuously neglect and/or fail in its obligations pursuant to CRC and CEDAW but take pro active steps to provide assistance and protection for child refugees and women respectively. The Immigration Act which criminalizes refugees and allows for arrest, indefinite detention and deportation to the country of origin is in urgent need of review and repeal.

Case Study 1

134. Ms A's husband was a friend of a senior member of the Chin National Front (CNF). The senior member often stayed at their home. One night, suddenly the soldiers stormed into their home and arrested her together with her husband. They were taken to the military prison. She was detained for two weeks together with her baby in the prison. She was interrogated and questioned of her husband's involvement with CNF. During the interrogation she was slapped, kicked and beaten with a rifle butt. Her husband was detained for four months. After four months of detention he was admitted in the hospital. Her husband was already dead when she arrived at the hospital. His face was covered with blood, there were blue black marks and bruises indicating that he was tortured to death by the soldiers.
135. Her father was concerned for her safety and made arrangement for her to leave the village. A villager told her to go to Ta Chi Let to meet an agent who will get her a job as a domestic help in Thailand. From Ta Chi Let an agent accompanied her by boat to Thailand and took her to the employer's home. She paid the agent RM 400 (Burmese 100 00).
136. Within two months in Chiang Mai she was arrested for not having travel documents and was sent to a detention camp in Mei Saw to be deported to Myanmar. She cried all day as she was afraid of returning to Myanmar. A policeman at the detention camp made arrangements with an agent to assist her. She told the agent that she would be killed if deported to Myanmar. The agent requested for Burmese 700 000 to take her across the border to Malaysia.
137. The agent assisted her and eight other men and women to cross the border to Malaysia. They remained in a squatting position at the back of the agents van. While the driver in the van crossed the immigration check point in Malaysia the group of persons walked on foot in the jungle. The agent took her to an employer in Malaysia. She worked for eight months to pay the agent. The agent collected the payment directly from her employer. She worked in a coffee shop between 8am-3pm and 5pm to 10pm everyday and is provided two meals a day.
138. In describing the agent, "Yes, the agent took a lot of money but he saved her life. What is the point of keeping the money because she will be killed by the soldiers if she returned to her village in Myanmar."

Case Study 2

139. Mr Y an asylum seeker from Myanmar, first entered Malaysia in 2000. He travelled from Kwuntung to Ranong by boat. In Kwuntung, a boatman calls out to passengers to provide travel for 2000 Kyats to cross the river. While travelling from Ranong to Golok by bus he was detained by Thai authorities and sent to Ranong detention camp for onward deportation to Myanmar. At Ranong he paid the police 500 baths for his release.

140. Upon his release he met an agent in Bangkok to assist him to cross the border to Malaysia. The agent requested for 12000 baths. He informed the agent that he will pay 6000 baths up front and 6000 upon safe arrival in Malaysia. The Agent accompanied him to Malaysia. In Golok they crossed a river at night to reach Malaysia. The journey took about 2-3 minutes. Thereafter they walked about three hours through a thick jungle. A car was waiting for them to take them to a house. The agent stayed with him and provided food and bath. He was taken to a bus terminal in Kelantan and boarded a bus to Kuala Lumpur. He paid the balance of the payment to the agent.
141. In Malaysia he initially worked at a printing shop and was paid RM 17 per day for work between 8am-5pm everyday. There was a police raid at the printing shop but he managed to escape. Thereafter he worked in a carpentry shop and later at a construction site. He was arrested during a police raid at the construction site and detained for two months at the Semenyih detention camp. At the camp he suffered from diarrhoea and dizzy spells.
142. He was deported to South of Thailand. Some detainees escaped, while the Malaysian authorities were in the process of removing the handcuffs of the detainees to hand them over to the Thai authorities. He tried to escape but was caught by a Thai officer, who kicked, slapped and punched him.
143. He was sent to a detention camp at Pone Thi near Myanmar/Thai border for onward deportation to Myanmar. One night he heard screams from the women detainees' block for help. By the sounds of their screams he believed they were being raped.
144. In Pone Thi, the Thai enforcement officers sent him to a plantation to work. He worked everyday from 9 am to 6 pm with no rest days. After two months of work he asked the owner for his wages and was informed that the army had sold him to the plantation. He was forced to work in the plantation for 9 months before escaping. Together with 2 others he walked for three days before he found a rubber plantation. He worked in the rubber plantation for 4 months and was paid 1200 baths.
145. Later an agent assisted him to cross the border to Malaysia for 1200 Baths. He paid 600 baths upfront. Upon reaching Malaysia he could not settle the balance amount. The agent gave him, his contact details. After 10 days he settled the balance amount with the agent. He describes the agent "as good man who fulfils his promise and he encountered no problems in the travel arrangements."

Case Study 3

146. Mr C escaped from his village in Myanmar to Thailand. His father was beheaded by the Myanmar military during a demonstration. From Thailand he made his way to Malaysia but was detained and deported back to Thailand. He was sent to Ranong, Thailand for onward deportation to Myanmar. An agent who secured his release from the detention camp and took him to a Thai fishing boat. A few days later he realised that he was sold to the fishing boat owner for RM 1200. He worked in the fishing boat for two months. Thereafter, an agent assisted him to cross the border to Malaysia for a payment of 3000 bath. One day he was stopped by the police and was asked for his passport. He told them that he does not have a passport, the police requested for RM 200 otherwise he will be arrested. He contacted a friend to loan him the money and paid the policemen. He prefers to be in Malaysia as opposed to Thailand because of Thailand's proximity to Myanmar and is afraid of being deported to Myanmar.
147. "The agent is a good man., he got him out of the Myanmar military's hands. The agent who sold him is bad, the agent did not tell him about the arrangement with the fishing boat owner."

CONCLUSION

148. There appear to be no comprehensive migration policy in protecting and promoting the human rights of migrants in the country. Immigration laws and policy instruments criminalizes migrants. The state focus is to eliminate the influx of illegal migration by using oppressive laws as oppose to addressing the root cause of irregular migration.
149. The current policy of deporting migrants appears to be encouraging and enriching human smuggling syndicates. The Immigration Act has to be reviewed. The act of deportation forces migrants to return through irregular channels. The policy of deportation causes more human rights violations against victims and enriches the syndicates who assist the migrants to return through irregular channels.
150. The Malaysian government should implement the recommendations of the Bali Process and not hide behind the principle of domestic application. The government can benefit from the recommendations of the Bali Process for sustainable development of the country by effectively combating syndicates involved in human smuggling and providing mechanism to protect migrants.
151. The government should implement the recommendations of the Royal Police Commission on corruption in curbing human smuggling, procedures related to arrest and detention and formulate and implement a more comprehensive code of ethics which embodies a value system that incorporate integrity, public accountability and upholding of human rights of vulnerable people such as migrants and refugees.
152. There is a need to dialogue and sensitize strategic stakeholders such as the police, MPs, Ministers and government agencies, judges and trade unions and media. This strategy is a first step towards protecting human rights of migrants as opposed to asking the state to ratify the UN Conventions.

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