



**TOWARDS A
COMPREHENSIVE
NATIONAL POLICY ON
LABOUR MIGRATION
FOR MALAYSIA**



**Migrant Workers Right to Redress Coalition
July 2017**



The Migrant Workers Right to Redress Coalition includes the following groups:

Malaysian Trade Union Congress (MTUC)
North South Initiative
Parti Sosialis Malaysia
Penang Stop Human Trafficking Campaign
Persatuan Sahabat Wanita Selangor (PSWS)
Tenaganita



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INTRODUCTION

There are an estimated 6 million migrant workers in Malaysia. This makes up about 30% of the total workforce in the country. Of these workers, only 32%, or 1.9 million workers, are actually documented. The remaining millions are undocumented, without protection. But most of them are employed and continue to make a significant contribution to our economy and our future as a nation. Indeed, crucial industries have become so heavily dependent on (undocumented) migrant workers that without them, they will totally collapse. This would spell disaster for Malaysia.

Yet despite such a significant presence and positive role, there is no comprehensive national policy on labour migration, to ensure that this vital migration is properly regulated, properly protected, and properly ordered, so that abuses against workers, social dislocation, profiteering, human trafficking and modern day slavery are rooted out and stopped. This in part follows from the negativity with which migrant workers are perceived, the reluctance to value their contribution, the huge suspicion of migrant workers, and the readiness to blame them for all sorts of social ills. The many reports and stories detailing the host of abuses perpetrated against women and men migrant workers are by and large ignored.

Far from being proactive, present policy response to labour migration continues to be ad hoc and frequently reversed. A case in point was the decision of the Home Ministry last year to recruit 1.5 million Bangladeshi workers. It contradicted the 11th Malaysia Plan strategy to reduce by half our dependence on migrant labour; it failed to address the very real worries about recruitment and control of the workers being under private labour outsourcing companies (also flagged in the 11th Malaysia Plan); and failed to consider objections from the employers and civil society. The latter, among other things, questioned whether there really was a need for so many more workers, and advocated that if this was really the case, then existing undocumented migrant workers (and refugees) already in Malaysia be documented and hired instead. This decision was reversed several times; it was followed by a total ban on recruitment, now lifted.

This episode demonstrated the continued unwillingness by the government to address the core issues related to labour migration into Malaysia. The core issues are: the need to properly plan our workforce and labour demands; to properly protect all workers; and to ensure that employment, health and other social legislation is adequate and properly enforced so that everyone in our country (employers, employees, citizens, residents) benefits and is protected against abuse.

There is another problematic policy area: our short-sighted health policy towards migrant workers. Under the revised fee schedule for foreigners enforced by government, charges have risen so sharply that many migrant workers simply cannot afford them. This means that they often do not seek health treatment, which clearly is not in the (Malaysian) public interest. By insisting on a policy which deters access to healthcare for a substantial segment of the population, far from saving money, the government and our nation lose. One example: for diseases such as tuberculosis, delay in detection and treatment can have disastrous effects for the overall population.

There are many other areas of concern linked to labour migration, all crying out for appropriate policy response. Many of these are presented below, together with recommendations for solutions.

Wider issues include the impact on the labour rights and expectations of the local Malaysian workforce by overdependence on, and exploitation of, migrant labour; the blind eye turned by the government to potentially widespread human trafficking and modern day slavery in our country; the impact on the lives of individual women and men migrant workers following the neglect of their fundamental human rights; and the negative impact on our society of the racism and xenophobia which is so sadly accompanying our dependence on migrant workers.



These are issues that have far-reaching consequences.

We should also recall the *'leave no-one behind'* principle, the first of five core principles for the post-2015 Millennium Development Goals (MDG) framework. Migrant workers are identified as one group who should not be forgotten simply because of their migration. The global community is increasingly acknowledging that all people living and working in a country should be equally included, and no group should be left behind, in the economic development of that country. This adds an extra reason, an ethical principle, to the need to have a comprehensive policy for migrant workers for Malaysia.

In recent years labour migration has become linked to huge profits made by companies and agents involved in the recruitment and placement of such labour. The people running this industry seem to have considerable influence on policy decisions, affecting in turn the possibility of good policy and good governance. The government must detach itself from such vested interests, and seriously plan and draw up a comprehensive framework for the good of all, Malaysians and migrants.

It was in such a context, and with such an objective, that the Migrant Workers Right to Redress Coalition organised a series of consultations with all stakeholders on the main aspects of labour migration. Four roundtables reflecting the theme **'Towards a Comprehensive National Policy on Labour Migration'** were held between August and October 2016.

Each Roundtable focussed on a specific aspect of labour migration, and between them covered Recruitment, Employment Rights, Undocumented Labour, Arrest and Detention, Social Security, Health and Housing, Family, Children, and Socio-Cultural Rights.

Representatives from different Ministries and agencies of the Malaysian government, embassies, employers organisations, workers' organisations, migrant workers, civil society, and academia attended and contributed to the roundtables. There was an average attendance of some 50 people at each roundtable.

The frank exchange of views and experiences from such a cross-section of stakeholders was most valuable, and has resulted in the background and recommendations presented as the bulk of this Report.

What is of significance is the consensus among stakeholders including the Malaysian Employers Federation, on crucial areas such as recruitment, management, the role of private agents, and the positive effect which would follow the legalisation of undocumented workers.

We forward the recommendations in this Report to the government and its agencies to come together and draft a much-needed comprehensive policy on labour migration.

We hope this will be done as a matter of urgency, part of the implementation of the commitments made in the 11th Malaysia Plan, and in the context of the principles set out in the ASEAN Declaration on Migrant Workers. A comprehensive policy is long overdue; and of course we offer our support and input.

Migrant Workers Right to Redress Coalition
July 2017

1.0 RECRUITMENT

Current situation and policy

One key issue is the way that private companies and agents have been allowed to make huge profits out of recruiting migrant workers in an environment that is largely uncontrolled and certainly insufficiently monitored. The MEF pointed out that a worker from Nepal has to pay RM 14,000 to agents in order to come to Malaysia when the actual cost is only be RM 1,500 (Airfare, Passport, Medical Check-up, Administrative Fee). The huge earning arising from the import of foreign labour is a major factor causing the over-recruitment of workers. The women and men migrant workers have little protection against false promises, contracts that may be changed once they arrive, and debt bondage arising because they have to pay agents and recruiters high fees and costs. Human traffickers and modern day slavers are a significant part of the picture.

This uncontrolled recruitment has led to a situation of over supply in Malaysia, which in itself leads to a host of consequent issues (not least the large number of highly vulnerable undocumented workers in the country). We should take note of ILMIA's (the research institute under the Ministry of Human Resources (MOHR)) estimate that the country needs no more than 2.4 million migrant workers in 2020.

According to the 11th Malaysia Plan (2016 – 2020), the MOHR will assume full responsibility for regulating the recruitment of migrant workers, eliminating the role of outsourcing companies and other intermediaries in the recruitment of foreign workers. The 11th Malaysia Plan also aims to make employers take full responsibility for the recruitment process and all the expenses involved; for the welfare of their workers, including their housing and basic amenities, until the worker returns home; and for the payment of the levy. These are positive and necessary steps that should be implemented as quickly as possible.



RECOMMENDATIONS on RECRUITMENT

1.1 One Ministry to be in charge

The Ministry of Human Resources (MOHR) should be given sole responsibility for the management and monitoring of all matters related to migrant workers, as set out in the 11th Malaysia Plan. Where they need support or initiative from other Ministries, this can be sought. But MOHR should be overall responsible.

1.2 Recruitment numbers

Recruitment should be determined by actual manpower needs based on transparent need assessment and the principle of complementing the local workforce and taking into account other available sources of labour. The recommendations of ILMIA should be given serious attention. Recruitment should also be guided by the 11th Malaysia Plan policy to cap the dependence on migrant labour at 15% of the total workforce by the year 2020.



Recruitment numbers should also include the advantages of recognising the right to work for refugees in Malaysia, the majority of them are likely to be in Malaysia for years to come. Studies from elsewhere show that their motivation and commitment make them an excellent addition to the workforce, adding value to the economy as well as giving security and protection to their own lives. By not recognising their right to work, we ensure that they are hugely vulnerable to abuse and neglect at the workplace (we are forcing them to work illegally), susceptible to the activities of human traffickers and modern day slavers. If we recognise their right to work, everyone gains (and the numbers are not so large).

1.3 Recruitment mechanism

There should be speedy initiatives and policy to eradicate the involvement of private agents and companies in the recruitment and supply of women and men migrant workers. Instead, there should be commitment to the adoption of a government-to-government (G to G) mechanism for all recruitment and management of migrant workers, as set out in the 11th Malaysia Plan.

1.4 Recruitment fees

The widespread prevalence of debt bondage (amounting in many cases to situations of modern day slavery) needs to be tackled by abolishing recruitment fees charged to the workers, and instead making all fees covering recruitment, visa, levy, health insurance and fare the responsibility of employers, as set out by the 11th Malaysian Plan. Recruitment costs can also be kept down by requiring only one medical report from a reputable medical institution in the home country.

1.5 Pre-Departure and Post-Employment Training

A comprehensive pre-departure training must be organised and delivered for all migrant workers, by relevant government bodies, unions, or CSOs. The training should cover the understanding of the contract, employment rights and protection in Malaysia, safety and health, how to seek redress and where to go for help, and what one needs to be sensitive to in terms of local culture. This training should be accompanied by a booklet setting out all this information, given to each worker. This pre-departure training should be provided free to all migrant workers.

Similarly, a post-employment initiative needs to be provided for those migrant workers returning home, to facilitate the process of re-integration back into one's homeland. This again should be under the purview of governments, perhaps in partnership with unions or CSOs.

1.6 Employment Contracts

Any employment contract presented to the worker in the country of origin should strictly adhere to standards and clauses based on International Labour Standards. The contract should be in the language of the worker, and should be attested to by the respective diplomatic mission. It should be very clear that where contracts are substituted after arrival in Malaysia, this will be zero-tolerated, and employers and any other offending party will be prosecuted without fear or favour. There should be a clear and protected avenue for workers to bring this to the attention of the authorities.



2.0 EMPLOYMENT IN MALAYSIA

Current situation and policy

There are widespread and significant abuses encountered by both documented and undocumented migrant workers in Malaysia. These include the flouting of the provisions of the Employment Act and other work-related legislation which should apply to all workers, regardless of origin. Similar to the situation with regard to recruitment, much of the abuse has been consequent on the activities of private companies and agents in handling the supply and treatment of migrant workers. These companies and agents remain largely unsupervised and unaccountable, and leave the workers vulnerable to exploitation and abuse.

There are many areas of specific concern. They include the way employers and/or companies/agents make unspecified deductions from the wages of the worker. If the worker gets a pay slip (which is by no means always the case, even though stipulated in the law), what deductions are being taken from the wage are unlikely to be listed. Deductions may include for things which the employer is responsible for, including levy, health checks and insurance. Employers or companies/agents may be making exorbitant deductions for things like accommodation, transport, and food. Of course deductions for original costs (airfares, recruitment fees, and etc) are part of the situation of debt bondage.

Employment legislation is consistently ignored, not least with regard to the prompt payment of wages, calculation and payment of overtime, statutory rest periods, rest days, and annual paid holidays, a host of health and safety provisions/concerns; the right to unionisation; and the right to redress. Women workers may face particular difficulty with regard to sexual harassment and sexual violence, the protection of reproductive rights, and in certain work sectors, specific exclusions from legislated rights (for example, in domestic work).

We are now committed to the Sustainable Development Goals (SDGs), and we should note that SDG 8 relates to the achievement of full and productive employment and equal pay for all, and the protection of labour rights and safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.



RECOMMENDATIONS on EMPLOYMENT in MALAYSIA

2.1 Abolish private companies/agents engaged in outsourcing

The activities of private agents and companies supplying labour ('labour outsourcing'), still rampant despite the many exposures of abuses by local and international groups and media, should be abolished. This is set out in the 11th Malaysia Plan and applies too to activities in relation to recruitment (see above).

2.2 Monitor and enforce the Employment Act and other work-related legislation

There should be strict monitoring and enforcement of the Employment Act and all related legislation covering workers and workplace situations.





The authorities need to act without compunction against any employer or company breaking the law, which includes the underpayment of overtime; the lack of respect for rest time, rest days and paid holidays; the provision of a pay slip containing all relevant details of deductions and overtime and other information related to pay; and all other provisions of the Employment Act and relating to unionisation, health and safety and compensation.

2.3 Enforce the minimum wage

The minimum wage is a basic right and must be strictly enforced for all workers. Anyone paying below the rate should be prosecuted without fear or favour.

2.4 Explain all 'deductions'

There should be full transparency for any 'deductions' made to a worker's salary, with a full explanation and accounting given to all workers by right. Clear and protected avenues must be available to any and all workers to bring any complaint to the Labour Office or elsewhere. The authorities should prosecute immediately any employer who is passing on the costs of health checks, levy and other costs for which they are responsible, with strict enforcement of penalties.

2.5 Respect and enforce right to unionisation

The rights of migrant workers with respect to unionisation should be fully respected and enforced. Migrant workers and employers should be informed that every worker has the right to join a union, and any breach of this right is punishable under the law.

2.6 Ensure retrenchment provisions cover migrant workers

Migrant workers should share protection against retrenchment, and be entitled to relevant compensation. This should be enshrined in the law, and compensation be portable: able to be paid to migrant workers even where they have been forced to return home.

2.7 Address all the issues related to domestic work

Special attention needs to be paid to the situation facing domestic workers. Regulated hours and provision of accommodation outside the work place (particular home of the employer) needs to be implemented. Legislation needs to be enacted extending full coverage to domestic workers against a variety of employment abuses. Domestic workers need to be given full details of where to seek help, where needed.

2.8 Ensure full Right to Redress exists for all migrant workers

A clear and enforceable right to redress needs to be established for women and men migrant workers. All workers should be given telephone numbers and details of the avenues through which they can bring any grievance, with the full assurance that they will be protected against reprisal if they do make a complaint. This right to redress needs to include the right to stay and work in Malaysia while a grievance is in the process of being heard; and the right to receive (with minimum delay) appropriate compensation. Penalties need to be enforced against employers who do not meet any ruling of the court.

3.0 UNDOCUMENTED WORKERS

Current situation and policy

There is widespread concern about the huge numbers of undocumented workers in Malaysia. This not only relates to the perceived consequences for Malaysian society, but also to the vulnerability of the millions of women and men undocumented migrant workers (and refugees are included in this) to harassment, exploitation, extortion, trafficking and/or detention. The number of undocumented workers has been rising, and currently are estimated to be 60% of the total migrant workforce. Regular amnesty and legalisation initiatives by the government have failed to address the problem for two reasons. The demand for undocumented migrant workers remains huge because hiring them is cheaper and easier for employers who can then make bigger profits.

As the Malaysian authorities are fully aware, 70% to 80% of SMEs employ undocumented workers (SMEs account for 98% of the total business establishments in Malaysia). SME Association president Datuk Michael Kang has stated that the reason for hiring these workers is *“because the cost of rehiring foreign workers is too high and the procedures too rigid”*. Barriers to legalisation of undocumented include the high processing fees charged by the private entities to whom the legalisation process is outsourced; the fact that agents often collect money but fail to complete the process; and the fact that a significant portion of undocumented workers are working in sectors that are not meant for foreign labour.

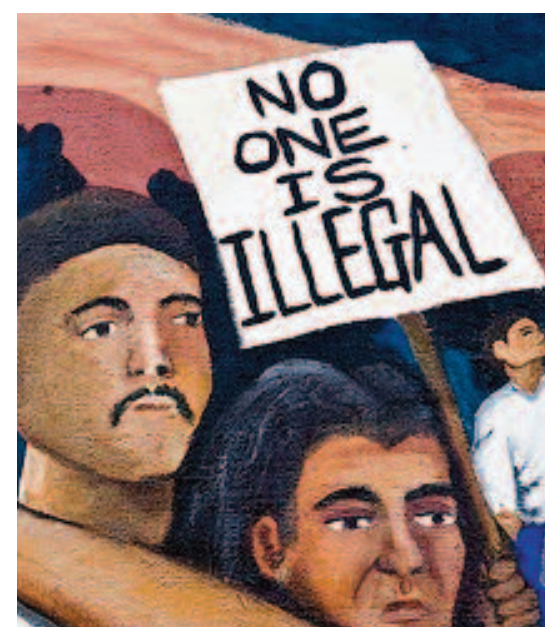
In addition, the uncontrolled activities of private companies and agents involved in ‘outsourcing’ migrant labour has led to a situation of over-supply and abuse of migrant workers by some of these companies, following which many migrant workers have little choice but to run away from the company and become undocumented.

This is made worse by the fact that, in defiance of the law, passports and work permits are held by the employer or outsourcing company or agent, meaning that when women and men migrant workers are wrongfully dismissed or forced to leave their employer/ company/agent because of abuse, they automatically become undocumented.

The fact that the authorities seem to ignore the abuses perpetrated by employers and/or companies and agents, but instead concentrate their efforts on catching and criminalising the migrant workers, does not help.

Also working as ‘undocumented workers’ are refugees. Refugees by definition are those women, men and children fleeing from a situation which is horrific and life-threatening. Some flee to Malaysia, where they may stay for many years (in some cases, over 30 years). The situation is that very few of them will be resettled, meaning their future and the future of their families is in this country. Denying refugees any rights, including the right to work, means they are forced to work in the black economy, completely unprotected, and at the mercy of unscrupulous employers, agents and human traffickers.

A large number of potential workers enter Malaysia on tourist visas but with the intention of working. Inconsistent policy enforcement has opened this loophole. Of course any failure to convert a tourist visa to a work permit results in persons becoming undocumented workers.



RECOMMENDATIONS on UNDOCUMENTED MIGRANT WORKERS

3.1 Monitor and strictly enforce the Passport Act and all other work-related legislation

There needs to be consistent enforcement of existing laws, not least the Passport Act, Immigration Act and Employment Act, without fear or favour, to protect the rights of migrant workers and employers. The enforcement of the Passport Act is especially important, to prevent migrant workers being unnecessarily vulnerable to harassment, extortion or arrest by enforcement officers. Abuse by employers and companies/agents of this Act has been consistently highlighted as breaking a fundamental human right and is a major factor in how migrant workers become undocumented. The penalties that exist in our statutes regarding jail sentences for employers who employ undocumented workers should be strictly enforced, without fear or favour.

3.2 Proactive control of numbers

There needs to be proactive control of numbers of migrant workers (see Recommendation 1.2). Setting up a proper database would be part of this. Such an initiative would significantly reduce the possibilities of having millions of undocumented migrant workers in Malaysia.

3.3 Stop private companies/agents engaged in outsourcing migrant labour

As noted elsewhere, the activities of private companies and agents engaged in outsourcing migrant workers should be stopped. Their activities are the source of many of the problems and abuses. The MOHR should have sole responsibility for overseeing the management of migrant workers, and employers should be directly responsible for their terms, conditions and recognition of rights.

3.4 Expedite effective legalisation and rehiring programmes, under the MOHR

Comprehensive and effective legalisation programmes and rehiring initiatives of undocumented workers should be handled and implemented by the Ministry of Human Resources alone, without involving private entities. This will both reduce the numbers of undocumented migrant workers and also ensure all workers have full rights.

3.5 Recognise the right to employment for refugees

Providing refugees with the right to work will ensure they are a full part of our workforce, protected, and (as is proven from research in other countries) will make a hugely positive contribution both to our economy and society.

3.6 Establish a clear Right to Redress including for undocumented migrant workers

If we are serious about tackling human trafficking, modern day slavery and other abuses against migrant workers, there needs to be a clear right of redress whereby workers can make a report to the relevant authority in the knowledge that they will be protected and their grievance given a fair hearing. A right to redress must include a right to stay and work in this country while their case is being pursued, as well as enforcement of adequate compensation to be paid (where relevant) in a timely manner should the grievance be upheld, otherwise the right will only be nominal.

3.7 Address issues of flexible work arrangements

There should be allowance for flexibility for change of employer in sectors that are contractual in nature, such as the construction sector which is short term and project based and entails regular change of employer and worksite. Such flexibility should also be allowed for migrant workers who are caught in life threatening or abusive work situations, which is the cause of so many of them running away and becoming undocumented.

3.8 Abolish whipping

Mandatory whipping for immigration offenses should be abolished. Being undocumented should be viewed and tackled through an administrative approach such as a fine instead of detention, imprisonment, and corporal punishment.



4.0 ARREST and DETENTION

Current situation and policy

The existence of literally millions of undocumented migrant workers, and undocumented asylum seekers, has meant that these women and men are highly vulnerable to harassment, extortion, arrest and detention, not least by the authorities. There are extensive reports that undocumented workers and refugees live in daily fear of encounters with authorities. Where such encounters take place in isolation, they may be subject to humiliation and forced to pay money to officers. This indicates a level of institutional corruption that needs to be tackled. Where such encounters are part of a raid, they are likely to end up in detention camps, which themselves are a source of huge concern (with regard to standards and treatment of detainees).

Most migrant workers do not hold their passports or travel documents; employers and/or companies or agents will be holding them, or, in the case of some undocumented workers, they will have lost it or left their original place of work/company. Efforts by some NGOs to push for the return of passport to the rightful owner rarely result in success. The authorities have not taken any significant action to enforce the law, especially the Passport Act.

The situation facing refugees is also very serious. Without any rights and often with no documentation, refugees are a prime target for certain officers of enforcement agencies, who harass, extort and potentially detain refugees, especially those without UNHCR cards. Thousands of refugees end up in detention camps, at huge cost to themselves and their families (a husband/father is likely to be the sole breadwinner) and also at unnecessary expense to the Malaysian taxpayer.

The core problems of arrest and detention of migrant workers (and refugees) are corruption and lack of law enforcement, especially of the Immigration Act and Passport Act. Corruption in the form of extortion of money by authorities toward migrant workers and refugees is difficult to be tracked. There is likely to be a lack of documented evidence. There are very few cases where migrant workers or refugees are able to bring evidence forward. Migrant workers are often fearful to come forward with documented evidence, because their undocumented status means they are not protected.



RECOMMENDATIONS on ARREST & DETENTION

4.1 Enforce Passport Act and all other relevant legislation

The Passport Act should be enforced without fear and favour. Law enforcement agencies should charge employers and companies/agents who withhold the passports of migrant workers in defiance of the law. This is a major abuse contributing to human trafficking and modern day slavery, and needs to be stamped out. Similarly, the Employment Act, health and safety legislation, industrial relations legislation including right to unionisation, and all other employment-related legislation should be rigorously monitored and enforced without fear or favour. To do this would remove many of the present grievances and abuses.

4.2 Curtail activities of private companies/agents engaged in outsourcing migrant labour

Employers should take direct responsibility for their workers and their protection, and one Ministry, the MoHR should take overall responsibility for the protection and welfare of all workers. The provisions of the 11th Malaysian Plan should be speedily implemented. We have noted the consequences arising out of the largely unmonitored activities of labour outsourcing companies and agents, in other sections.

4.3 Tackle institutional corruption

To combat the harassment, extortion and other corrupt practices within enforcement agencies (including RELA) so widely reported by migrant and refugee communities, the government needs to strengthen and support the investigations of its anti-corruption agencies and bodies like the EAIC. Zero tolerance of harassment, extortion and other corrupt practices needs to be established through determined investigation of complaints, leading to prosecution and dismissal. Protection of complainants must be provided (part of the overall right to redress). Closer cooperation between anti-corruption agencies and MAPO (the Anti-Trafficking Council) should be nurtured.

4.4 Ensure the management of detention camps is open and accountable; allow access

The government should publish clear standard operating procedures (SOPs) to govern the administration of all detention camps in Malaysia. These should outline clear avenues for family visits, communication, and health checks. Responsibilities for the investigation of any death in a detention camp must be detailed. Clear procedures for monitoring and enforcement of hygiene and adequate standards of nutrition and exercise must also be adopted. A clear complaints procedure needs to be established to investigate reports of abuse and mistreatment.

4.5 Establish an effective Right to Redress to cover situations of harassment, arrest and detention

In repeating the importance of a right to redress, there needs to be a clear process established to allow persons who are victims of harassment, arbitrary arrest and arbitrary detention to make a complaint in the knowledge they will be fully protected and the complaint will be acted upon without fear or favour.



5.0 WOMEN MIGRANT WORKERS

Current situation and policy

Women migrant workers face particular challenges, in addition to sharing the situations and possible abuses described in the other sections.

Particular areas of work, including domestic work, may put them in utterly vulnerable situations where their isolation and situation makes it very difficult for them to get any necessary outside help. They are particularly vulnerable to sexual violence, and may have little access to advice, support or avenue to make a complaint and secure restitution and justice. There are many examples of horrific abuses, which may just be the tip of the iceberg.

Specific clauses of the Employment Act are also defined as not applying to domestic work, and this whole sector is a source of huge concern.

Women have also faced problems regarding attempted interference and control over their private lives, including clauses being included in their work contracts which intend to control their relationships. There is a lack of recognition or understanding of reproductive rights and extensive abuse, as a result.

Women are of course also especially vulnerable to human trafficking and to the activities of modern day slavers. Both trafficked for labour (not least domestic servitude) and into the sex industry, women may find it especially difficult to find an avenue of escape and a right to redress. Instead, they may find themselves rounded up and criminalised.



RECOMMENDATIONS on WOMEN MIGRANTS

5.1 Review all laws to ensure the rights of women workers are fully protected

There needs to be a thorough review of all existing employment legislation, specifically assessing how it protects or does not protect migrant women workers.

More than that, there needs to be far more effective monitoring and enforcement of the law. This in itself would give greater protection for women, for example in the service sector, including in restaurants and at workplaces like laundrettes. The MOHR needs to commit far more resources to this.

5.2 Review and completely reform domestic work

The whole area of domestic work needs a complete overhaul. It is at present rampant with abuse. Women are being trafficked into the industry; many work in conditions little better than slavery. Key sections of the present Employment Act are deliberately excluded from applying to domestic work; this is unacceptable. Tenaganita has produced a draft Domestic Work Bill as a separate piece of legislation, and this should be adopted.



RECOMMENDATIONS on WOMEN MIGRANTS (contd)

5.3 Introduce proper legislation on sexual harassment

A law providing proper protection against sexual harassment needs to be enacted. This is long overdue. Present legislation is ineffective and yet the extent of sexual harassment is well documented. Migrant women workers are particularly vulnerable because they have very little support networks; proper legislation would provide much needed protection to all women, Malaysian and non-Malaysian. Enforcement is crucial.

5.4 Better understand and protect reproductive and family rights

There needs to be better understanding and protection of the reproductive and family rights of migrant women. Pregnancy is listed as an illness under FOMEMA, and those who become pregnant face deportation. Pregnancy is not a disease and should not be dealt with as one; it needs to be seen as a fundamental human right and respected as such. Contracts making pregnancy a dismissable offence should be disallowed, and so should any selective targetting of migrant women in relation to abortion. Abortion is allowed for Malaysian women in certain circumstances and the same right should be honoured for migrant women. Contracts or actions by employers or companies/agents stopping (women) migrant workers from getting married should not be tolerated; this is another practice that goes against a basic human right which we all share.

5.5 Be sensitive to and support survivors of human trafficking

There needs to be a radical overhaul of the awareness of the possibility that women workers are survivors of trafficking. At the moment, there are too many cases where migrant women are rounded up and charged with offences; there is very little sensitivity to the fact that they may have been trafficked. This needs to change.



6.0 HEALTH & SOCIAL SECURITY

Current situation and policy

Healthcare is a basic right which should be equally accessible to all who reside in Malaysia without exception.

At the workplace, the situation is very uneven, with many documented and most undocumented workers not being adequately covered for health and safety. Many employers do not take out insurance for them and so workers remain uncovered in situations of accident or death. Statutory obligations and provisions remain largely unknown to workers and to many employers; outsourcing agents and companies of course mainly ignore any health provision. Fees for obligatory health checks for migrant workers have shot up from RM 60 to RM 180 per medical examination after it has been privatised as FOMEMA, deterring employers and others alike from 'officially' employing migrant workers (or simply passing on the costs to their migrant workers, which is against the law). Migrant workers are again seen as a cash cow for privatised companies to make millions out of. Their health and the health of Malaysia is sacrificed.

Where workers need to seek health advice or diagnosis outside the workplace, they face intimidatingly high charges and the very real possibility of harassment, arrest and/or detention. Government hospitals are required to report anyone without documents seeking medical treatment. So unless absolutely necessary, migrant workers avoid contact with health services. This helps to explain the worrying rise in communicable diseases. For example, there were 24,711 cases of TB in 2014, a huge increase from the 10,000 cases documented in 1990. This is not a happy situation for either the workers or for Malaysia.

In terms of wider social security coverage, there is plenty of need to address the issues. Malaysia is not a signatory to the ILO's Social Security (Minimum Standards) Convention, 1952 (No. 102) which lists nine branches of the social security system, i.e. medical (health) care, sickness benefits, unemployment benefits, old age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits, and survivors benefits. Yet all these are relevant to migrant workers who are major contributors to our economy and society, and we need to find ways to extend coverage and protection.



RECOMMENDATIONS on HEALTH & SOCIAL SECURITY

6.1 All migrant workers should be covered by SOCSO

All workers, including migrant workers, should be covered by the Social Security Act (SOCSO). There should be rigorous enforcement to ensure there is sufficient insurance protection for all workers, so that there is adequate coverage in case of illness, accident or death. This would include reference to the Foreign Workers Hospitalisation and Surgical Scheme (SPIKPA). There needs to be far more resources put behind monitoring and enforcement of all health and safety provisions of the Malaysian legislation, so that all workers (Malaysian and non-Malaysian) are fully protected and abuses identified and dealt with. Free protective equipment not only needs to be supplied as appropriate, but its wearing enforced.

6.2 Special attention to be given to specific health issues facing women, including reproductive health

As noted in Section 5 above, women workers face particular challenges. Safeguarding reproductive health and reproductive rights is one area of immense concern, and where appropriate action needs to be taken.



6.3 All migrant workers covered and able to access treatment and compensation following accident or death

There need to be clear avenues whereby migrant workers can access treatment and compensation following work-related illness, accident or death. The Malaysian government needs to comply fully with ILO Convention C19 governing equality of treatment and accident compensation. Comprehensive investigations should be carried out by fully qualified medical personnel so as to independently verify the cause of death. The fact that employers do not report accidents in the work place needs to be tackled by committed enforcement procedures, including ensuring action is taken on reports by third parties such as hospitals, migrant workers themselves, NGOs, diplomatic missions, or members of the public. This should lead to full and impartial investigation and the support for migrant workers' compensation claims, as appropriate.

6.4 Safeguarding Physical and Mental Health of Workers

There should be strict enforcement of the clauses in the Malaysian employment legislation relating to health and safety as well as hours and conditions of work. There should be prosecution of employers who make their workers endure long working hours and irregular shift work. There should be prosecution of employers who ignore provisions of rest periods, rest days, public holidays and annual leave. There needs to be a review of occupational and mental health provision to upgrade skills, resources and availability both to Malaysian and non-Malaysian workers. This particularly applies to mental health identification and support, which is significantly lacking.

There should be zero tolerance for neglect leading to severe injury or death, with mandatory closing down of a workplace (factory, construction site, or other work location) for a minimum of 48 hours if a death occurs, to allow a full forensic evaluation of how the death occurred. This should be extended to 96 hours if another death occurs within one calendar year.

The Ministry of Health should establish a task force to document and evaluate all causes of unexplained sudden deaths to ascertain the causes (for example, overwork, or lack of compliance to health & safety). This could be done in partnership with University Hospitals or other organisations.

6.5 The right to health safeguarded: access to healthcare guaranteed

Barriers faced by migrant workers and refugees in accessing healthcare at all government and public health facilities need to be removed. Specifically, the high fees charged for healthcare to foreigners should not apply to migrant workers or refugees: they should pay the same as Malaysian citizens. And migrant workers, documented or undocumented, and refugees should be able to access healthcare without fear of arrest and detention. The recommendations regarding adequate insurance are noted again here as relevant to the ability and affordability for migrant workers to access appropriate healthcare, so vital for the health of both worker and our nation.

6.6 Health Education

Migrant workers should be given materials in appropriate languages, describing common health conditions, how to prevent/treat them, and where to go for help or advice. Embassies and High Commissions can be partners in this. Community health programmes involving migrant workers and refugee communities could also help deliver health education and primary health care.

6.7 Pension Scheme for migrant workers

A comprehensive review of social security provisions and possibilities for migrant workers and refugees should be conducted and a mandatory portable pension scheme similar to the EPF with contributions from employees and employers should be established. This should be part of a multilateral agreement among ASEAN countries, operated in partnership with the respective embassies.



7.0 HOUSING

Current situation and policy

The vast majority of migrants are dependent on their employers or outsourcing agents for their housing. They have no control over it. Yet all too often the housing provided is sub standard, unsafe, over-crowded, poorly ventilated, unhygienic, possibly secluded, and for which migrants are heavily over-charged. There is little or no monitoring of this by the appropriate government agencies and local councils, meaning little or no attention is paid to the effect this has on the health and welfare of migrant workers, or the local host community. What legislation exists is regularly flouted by employers or outsourcing companies/agents. This includes provisions under the Minimum Standards of Housing and Amenities Act (Act 446) passed in 1990 by the Ministry of Human Resources for plantation and mining workers, and the Guidelines on the Minimum Standards of Housing for Foreign Workers, enforceable by the Labour Office and adopted in January 2016.

The Act requires employers to provide free and suitable housing, adequate supply of electricity and free water, child care centres, and community halls and recreational facilities. In 2016, the provisions of this Act were extended to migrant workers in all other sectors through the Guidelines on the Minimum Standards of Housing for Foreign Workers.

And again we can note our commitments to the SDGs, of which SDG 11.1 states : By 2030, access will be ensured for all to adequate, safe and affordable housing and basic services.

RECOMMENDATIONS on HOUSING

7.1 Existing provisions and guidelines to be strictly enforced; abusers should be prosecuted

All existing laws and guidelines related to housing standards (including any specific to migrant workers) should be strictly enforced, and errant employers or companies or agents responsible for abuses be identified and prosecuted, without fear or favour. Particular industries, including the plantation and construction industries, should be particularly monitored and proper standards enforced.

7.2 Full information about deductions supplied

Migrant workers should have full information on the amounts they are charged for accommodation (including itemisation of deductions for utilities). Where there is concern about exorbitant charges and profiteering, there needs to be a clear and independent right of redress established for migrant workers to pursue complaints.

7.3 Live-in situations should be outlawed, for example for domestic workers

The abuses faced by many domestic workers partly stem from the fact they are confined to the employer's home 24 hours a day, 365 days a year. This puts them in a highly secluded and vulnerable situation. Domestic workers should be treated like any other worker, with regular hours of work defined as per the Employment Act and enforced, and where housing is provided outside the home of the employer.

7.4 Municipal and other local councils should be much more active in monitoring housing

There is plenty of scope for local councils to become more active in monitoring housing standards and provisions, taking action against errant companies. Sub-standard housing breaches health and environmental legislation provisions and has detrimental impacts on the health of all residents and locations under the control of local councils.





The ILO Recommendations for Housing (1961) should also be followed:

Housing should ensure structural safety and reasonable levels of decency, hygiene and comfort. The undertaking should ensure the following:

- a) a separate bed for each worker;
- b) adequate headroom, providing full and free movement, of not less than 203 centimetres;
- c) the minimum inside dimensions of a sleeping space should be at least 198 centimetres by 80 centimetres;
- d) beds should not be arranged in tiers of more than two;
- e) bedding materials should be reasonably comfortable;
- f) bedding and bedframe materials should be designed to deter vermin;
- g) separate accommodation of the sexes;
- h) adequate natural light during the daytime and adequate artificial light;
- i) a reading lamp for each bed;
- j) adequate ventilation to ensure sufficient movement of air in all conditions of weather and climate;
- k) heating where appropriate;
- l) adequate supply of safe potable water;
- m) adequate sanitary facilities (see below);
- n) adequate drainage;
- o) adequate furniture for each worker to secure his or her belongings, such as a ventilated lockable individual clothes locker
- p) common dining rooms, canteens or mess rooms, located away from the sleeping areas;
- q) appropriately situated and furnished laundry facilities;
- r) reasonable access to telephone or other modes of communications, with reasonable appropriate charges; and
- s) rest and recreation rooms and health facilities, where not otherwise available in the community.

APPENDICES

APPENDIX ONE: LIST OF PARTICIPANTS at ROUNDTABLES

These are some of the organisations who attended at least one of the four roundtables held in 2016. Individual participants are not listed.

Government

Ministry of Health
Ministry of Home Affairs
Ministry of Human Resources
Immigration Department
Labour Office

Embassies

India
Indonesia
Myanmar
Nepal
Sri Lanka

Institutions

International Labour Organisation (ILO)
Open Society Foundation
The Asia Foundation
United Nations High Commissioner for Refugees (UNHCR)
World Bank

Unions

Malaysian Trades Unions Congress (MTUC)
Building and Woodworkers' International (BWI)
Paper and Paper Products Manufacturing Employees' Union
Electrical Industry Workers Union (EIWU)

Migrant Worker groups

Pravasi Nepali Co-Ordination Committee (PNCC)
SERANTAU, Indonesia
Asosasyon Ng Mga Makabayang Manggagawa Pilipino Overseas (AMMPO)
Myanmar Migrant Rights Centre(MMRC)
Cambodian Migrant Workers Solidarity Network
Migrant88, Bangladesh

Employers

Malaysian Employers Federation (MEF)

Non-Government Organisations

Archdiocesan Office of Human Development (AOHD)
Center to Combat Corruption & Cronyism (C4)
CARAM Asia

Committee for Asian Women (CAW)

Legal Aid Centre
Migrant Care
North South Initiative (NSI)
Penang Office of Human Development (POHD)
Sahabat Wanita
Suaram
Tenaganita
The Forest Trust
TransparentEm
Women's Aid Organisation (WAO)

Universities/Research Centres

International Islamic University Malaysia
Institut Keselamatan Awam Malaysia
Khazanah Research Institute
Penang Institute
Political Studies for Change (KPRU)
Universiti Malaya

Others

The Kuala Lumpur And Selangor Chinese Assembly Hall
National Association of Women Entrepreneurs of Malaysia
Parliamentary Labour Caucus
Parti Sosialis Malaysia (PSM)



APPENDICES

APPENDIX TWO: Selected Extracts from 11th MALAYSIA PLAN

11th Malaysia Plan Chapter 5: Accelerating human capital development for an advanced nation

Improving management of foreign workers

Reducing reliance on low-skilled foreign workers

A comprehensive immigration and employment policy for foreign workers will be formulated, taking into account the requirements of industry and the welfare of foreign workers.

Heavy reliance on low-skilled foreign workers, particularly in labour-intensive activities will be addressed holistically. The proportion of foreign workers in the workforce is capped at 15% of total workforce in 2020. Greater automation especially in labour-intensive activities, as well as migration to knowledge-intensive activities will be encouraged in all sectors of the economy, particularly in the agriculture, manufacturing, and construction sectors, which currently employ more than 30% of foreign workers.

The levy system will also be improved to better regulate the entry of low-skilled foreign workers. This levy will be borne by employers and based on the ratio of foreign workers to total workers in a firm and the duration of employment. The levy will be increased gradually over time to increase its effectiveness.

Streamlining the recruitment process for foreign workers

The Government will streamline the recruitment of foreign workers by placing it under a single administration. The MoHR will assume the lead role in policy-making for foreign worker management.

The Government will streamline recruitment processes at the One-stop Centre (OSC). The OSC will be responsible for determining the requirement of foreign workers by sector; verifying and approving applications for recruitment of foreign workers; monitoring and responding to all matters related to the welfare of foreign workers; and ensuring that foreign workers are employed in the approved sectors and firms. With the streamlining of OSC operations, the role of outsourcing companies and intermediaries will be eliminated.

The Government will introduce the strict liability concept whereby employers of foreign workers are fully responsible for their recruitment process and welfare. In addition, the Government will address the issue of illegal foreign workers through better management and effective enforcement initiatives.



ASEAN Declaration on the Protection & Promotion of the Rights of Migrant Workers 2007



After the preamble, the Declaration adopts these General Principles:

Both the receiving states and sending states shall strengthen the political, economic and social pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN Member Countries;

The receiving states and the sending states shall, for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented;

The receiving states and the sending states **shall take into account the fundamental rights and dignity of migrant workers and family members** already residing with them without undermining the application by the receiving states of their laws, regulations and policies; and

Nothing in the present Declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented.

OBLIGATIONS OF RECEIVING STATES

Pursuant to the prevailing laws, regulations and policies of the respective receiving states, the receiving states will:

Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;

Work towards the achievement of harmony and tolerance between receiving states and migrant workers;

Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services as appropriate and in accordance with the legislation of the receiving state, provided that they fulfill the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral treaties;

Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers;

Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states; and

Facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any other manner, under the laws and regulations of the receiving state and in accordance with the Vienna Convention on Consular Relations.

OBLIGATIONS OF SENDING STATES

Pursuant to the prevailing laws, regulations and policies of the respective sending states, the sending states will:

Enhance measures related to the promotion and protection of the rights of migrant workers;

Ensure access to employment and livelihood opportunities for their citizens as sustainable alternatives to migration of workers;



Set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin; and

Establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies.

COMMITMENTS BY ASEAN

For purposes of protecting and promoting the rights of migrant workers, ASEAN Member Countries in accordance with national laws, regulations and policies, will:

Promote decent, humane, productive, dignified and remunerative employment for migrant workers;

Establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin;

Take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities;

Facilitate data-sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states;

Promote capacity building by sharing of information, best practices as well as opportunities and challenges encountered by ASEAN Member Countries in relation to protection and promotion of migrant workers' rights and welfare;

Extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements;

Encourage international organisations, ASEAN dialogue partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and

Task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers, consistent with ASEAN's vision of a caring and sharing Community, and direct the Secretary-General of ASEAN to submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.



APPENDIX FOUR: Statistics on Migrant Workers in Malaysia as at February 2016

These statistics refer to PLKS (Temporary Employment Pass) Holders as at February 2016

.NATIONALITY	SECTOR												TOTAL
	DOMESTIC WORK		CONSTRUCTION		MANUFACTURING		SERVICES		PLANTATION		AGRICULTURE		
	M	F	M	F	M	F	M	F	M	F	M	F	
BANGLADESH	26	122	90,399	58	93,685	445	27,999	99	19,510	10	12,589	31	244,973
CHINA	4	235	4,807	354	1,185	216	921	5,149	16	14	21	24	12,946
INDONESIA	507	95,868	205,365	17,667	38,879	82,978	21092	18,768	191,740	38,259	6,8167	1,3281	792,571
INDIA	44	915	9,295	85	3,079	15	54,826	187	21,187	240	39,754	963	130,590
CAMBODIA	5	3,009	192	40	1,088	1,640	123	1,079	137	77	228	92	7,710
LAOS	0	25	2	0	8	14	1	5	0	1	3	0	59
SRI LANKA	14	1,283	120	5	2,778	1,083	842	46	211	24	260	48	6,714
MYANMAR	8	109	19,137	775	76,711	18,151	14,169	1,975	1,810	373	4,510	889	138,617
NEPAL	26	39	14,331	12	311,590	13,518	94,968	336	5,103	9	15,594	426	455,952
PAKISTAN	4	31	31,123	66	3,285	3	6,111	28	7,498	15	21,702	45	69,911
PHILIPPINES	103	40,180	3,663	128	3,891	519	4,051	1,868	3,444	1,322	3,399	978	63,546
THAILAND	9	328	730	13	235	83	3,534	3,893	301	167	850	461	10,604
VIETNAM	5	718	4,190	183	15,876	21,643	761	815	44	36	234	250	44,755
TOTAL	755	142,862	383,354	19,386	552,290	140,308	229,398	34,248	251,001	40,547	167,311	17,488	1,978,948
		143,617		402,740		692,598		263,646		291,548		184,799	

Source: Parliament reply





Discussions at the Roundtables



The second Roundtable

**Menuju Dasar Komprehensif Nasional
Tentang Migrasi Buruh**

Meja Bulat Siri 2

***“Mekanisme Aduan; Pekerja Tidak Berdokumen
& Penangkapan dan Penahanan”***

8 September 2016

Right to Redress
Coalition

Anjuran Bersama

Fakulti Ekonomi dan Pentadbiran,
Universiti Malaya



This Report is the outcome of four Round Tables held in 2016 which brought together an excellent range of stakeholders to discuss key factors related to labour migration in Malaysia.

The Report contains a series of recommendations which emphasise three things - to fully enforce existing laws, to speedily implement crucial and positive commitments of the Eleventh Malaysia Plan, and to introduce new initiatives to cover some of the gaps in provision which leave millions of women and men workers significantly vulnerable to abuses and exploitation for which they have little or no redress.

We look forward to working together to ensure all these recommendations happen.



The Migrant Workers Right to Redress Coalition includes:
Malaysian Trade Union Congress (MTUC); North South Initiative;
Parti Sosialis Malaysia; Penang Stop Human Trafficking Campaign;
Persatuan Sahabat Wanita Selangor (PSWS); Tenaganita.

