

Malaysia: Immigration raids make criminals out of victims

Saturday 21 July 2018, by [Collective / Multiple signers](#) (Date first published: 4 July 2018).

LETTER | In response to the ongoing enforcement operations on undocumented migrant workers by the Immigration Department, we the migrant community and civil society organisations concerned with migrants' rights are very concerned about the future of migrants in the country.

The directives in Home Minister Muhyiddin Yassin's press statement fails again to address the root causes of the issues and do not provide enough time for proper discussions and analysis for just remedies which need to be holistic, comprehensive and be based on the International Labour Organisation's conventions and fundamental human rights principles.

These concerns also cover refugees, asylum seekers and stateless communities, who are also at risk of being detained during these enforcement operations.

How migrants become undocumented

Many of the migrants the Malaysian government has labelled 'illegal' (or in more humane terms 'undocumented') attain that status due to no fault of their own. Some of these reasons include:

Trafficking: Malaysia's history as a human trafficking hub is well documented by civil society and even reflected in government data. Recent revelations regarding a large and politically well-connected trafficking syndicate, as well as Malaysia's downgrade to the Tier 2 watch list of the US State Department's Trafficking in Persons report further reinforces our fears of the prevalent and possibly even systemic existence of trafficking networks within Malaysia.

We must never punish migrants who became victims of trafficking to Malaysia, as their circumstances are beyond their control. Criminalising victims and survivors is not the way to go; we should instead be going after the syndicates and those responsible.

Deception: Agents have a history of giving false advice and promises regarding the process of getting permits and jobs in Malaysia. Some migrants have low literacy levels, making them susceptible to fraud and deception, and even literate migrant workers become possible victims of fraud and unjust treatment by both recruiters and employers.

Recruiters promise work permits and good employment contracts with decent wages and conditions. Upon arrival, however, these workers often find that not only have their contracts, employment sites, and terms and conditions been changed, but that they may have also violated Malaysian immigration laws. For most workers, there is little access to justice or right to redress mechanisms in proving the fraud and deception.

Rehiring: The rehiring process is lengthy and non-transparent, and the subcontractors and sub-agents of rehiring face little accountability. It is a privatised process driven by profiteering, fraud

and deception.

For example, workers are not given receipts of rehiring payments and many agents cheat workers, taking their money but not providing e-cards. There is no adequate redress mechanism that can investigate and track these agents. While we welcome the cancellation of problematic rehiring contractors, we are afraid that workers in the midst of registration may be again victimised by this move.

Renewal: The migrant working visa renewal process is equally riddled with cheating, a lack of transparency and little accountability by agents and employers. Most migrants have little idea of how this opaque process works. Passports are often illegally held by employers and whether their visas are renewed or not is out of the beyond the worker's control.

Employer bondage and exploitation: The past Malaysian government's hiring policy, which now needs to be reviewed by the new government, requires an employer's consent for workers to change employers.

This inflexibility is particularly problematic in cases of exploitation, intimidation and physical violence where workers have no choice but to abscond and become undocumented. This is exacerbated where workers' passports have been illegally retained. This system, which resembles the widely-criticised kafala system practised in Gulf countries, provides little option to seek redress for workers in this situation, particularly with the overhanging threat of deportation.

Amnesty blacklisting: The 3+1 amnesty programme, which blacklists workers for five years, further discourages them from using the amnesty system and thus forces them to become undocumented.

Accountability: The complex commercial chains of private outsourcing companies and agents that govern migrant workers' affairs activities render them largely unaccountable. Companies and agents often deny or neglect their responsibility for their workers, and many migrant workers become undocumented because of the irresponsibility of these companies and agents.

Border enforcement: Documented corruption and inefficiency within border enforcement agencies add to the problems faced by migrant workers, benefiting from the activities of the accountable recruitment industry and providing little relief or assistance when things go wrong.

Recruitment debt: Many migrant workers believe the promises made to them in their countries of origin by agents and employers. They borrow huge sums from syndicates and moneylenders to finance the initial migration costs. This debt bondage is exacerbated by the illegitimate substitution of contract terms, arbitrarily driving down wages and conditions and imposing unaccountable wage deductions, making repayment increasingly difficult. Sending people home in such circumstances is putting many workers at risk, and this needs to be clearly addressed.

To ensure that all labour migration matters are handled in a way that gives dignity and respect to migrant workers, we demand a holistic solution based on the following recommendations:

- An immediate moratorium on raids/enforcement operation Ops Mega 3.0 to ensure no workers are punished for crimes which are not their fault. These raids and operations should be suspended while a holistic assessment of all the issues and potential comprehensive solutions are undertaken with all stakeholders with regard to labour migration.
- That the government makes available its standard operating procedure for conducting raids and detaining undocumented migrant workers, so that human rights and civil society organisations can ensure fundamental rights are protected and due process is guaranteed.
- To decriminalise the "undocumented" status of workers (which is an administrative offence),

and recognise that becoming undocumented is primarily an outcome of labour exploitation. This is especially relevant for vulnerable groups like women and child migrant workers, who face additional layers of exploitation which leads to them being undocumented and victims of forced labour and trafficking.

- That the Institutional Reforms Committee facilitates safe dialogue spaces between the government of Malaysia and migrant communities and other relevant stakeholders and social actors to propose evidence-based solutions. Such solutions must be based on clear verified labour market data (for example from the Institute of Labour Market Information and Analysis, employer organisations and other sound economic analysis) and base its solutions on fundamental human rights and decent work principles. The involvement of the ILO would be advisable in this respect.
- To facilitate the overhaul and expansion of government-to-government hiring mechanisms as the primary means by which workers are recruited in Malaysia in a manner that is transparent and accountable as well as evidence- and rights-based.
- More time must be given to migrant workers to process and secure their working visa status and make decisions on their working status in Malaysia. Unrealistic deadlines force workers to go underground, and collaborate with exploitative actors within the labour supply chain, driving criminality and other high-risk activities.
- The government should stop blacklisting migrant workers who use the 3+1 amnesty programme, an action which only discourages its use. The programme should be conducted exclusively by the Immigration Department to avoid levying excessive charges on already-struggling workers and discourage profiteering.
- The government must ensure all migrants have access to justice and the right to redress, including when they are caught and detained. This due diligence must be practised by enforcement agencies and the judiciary to ensure accused migrants have a fair trial and a chance to defend themselves. Migrants must have guaranteed access to legal aid from the National Legal Aid Foundation to achieve these goals.

Migrant workers play a huge part in securing economic growth for Malaysia and will still be needed in years to come by various industries. The government must play a more active role in educating the Malaysian people that migrant workers are not their enemies or the cause of their own financial or employment problems.

Migrants are here because the Malaysian government, employers in formal and informal sectors and agents opened spaces for their work. So how can migrants be 'illegal'?

No person is illegal. We have always been keen to discuss these matters with all appropriate authorities to find the best solutions. This is a good time for the new government to take stock of what the real situation is and determine what possible solutions might be, before taking any actions.

Accordingly, migrant communities and civil society organisations concerned about migrants' rights request an urgent meeting with the home minister and human resources minister to discuss and propose comprehensive, rights-based solutions on these and related issues.

Endorsed by

- Asosasyon ng mga Makabayang Manggagawang Pilipino Overseas (AMMPO), Philippines/
- Sentro ng mga Nagkakaisa at Progresibong Manggagawa (Sentro), Philippines
- Serantau, Indonesia/Malaysia
- Building and Wood Workers' International Asia-Pacific
- GEFONT Support Group, Nepal/Malaysia
- Pravasi Nepali Coordination Committee (PNCC, Nepal/Malaysia)

- Myanmar Migrants Rights Centre (MMRC), Myanmar/Malaysia
- Muglan-Migrants Advisor, Nepal/Malaysia
- Serikat Buruh Migran Indonesia (SBMI), Indonesia
- Nepalese People Progressive Forum, Nepal/Malaysia
- Tenaganita, Malaysia
- Migrant 88
- Penang Stop Human Trafficking Campaign, Malaysia
- Persatuan Sahabat Wanita Selangor (PSWS), Malaysia
- Committee of Asian Women (CAW)
- North South Initiative (NSI), Malaysia
- Suara Rakyat Malaysia, Malaysia
- Pusat Komus
- Bangladesh Institute of Labour Studies, Bangladesh
- Workers Hub For Change (WH4C), Malaysia
- People Forum for Human Rights (People Forum), Kathmandu, Nepal
- Center for Migrant Advocacy, Philippines (CMA-Phils), Philippines
- The People's Coalition for Fisheries Justice (Kiara), Indonesia
- SEAFish for Justice , Indonesia
- Health Equity Initiatives (HEI)
- Asian Network for Social & Agricultural Development (Sansad)
- Coalition of Cambodian Farmers Community Association (CCFC), Cambodia
- Community Development Services (CDS), Colombo, Sri Lanka
- Adaleh Center for Human Rights Studies, Jordan
- Association for Community Development (ACD), Bangladesh
- Think Centre, Singapore
- Dibashram (Migrant Workers Cultural Centre), Singapore
- Burmese Worker Circle, Fort Wayne, Indiana, USA
- Tahananang Filipino Kuala Lumpur, Malaysia
- Institute of Education Development, Social, Religious and Cultural Studies (Infest) Yogyakarta, Indonesia
- Migrant Care, Indonesia
- Migrant Care, Malaysia
- New Thessalonian Apostolate (NTA), Malaysia
- PieceWorks International
- Projek Dialog, Malaysia
- Persatuan Kesedaran Komuniti Selangor (Empower), Malaysia
- Pertubuhan Pembangunan Kebajikan Dan Persekitaran Positif Malaysia (Seed), Malaysia
- Radanar Ayar Association, Myanmar
- Asia Transnational Corporation Monitoring Network (ATNC)
- Workers Initiative Kolkata, India
- Asia Monitor Resources Centre (AMRC)
- Konfederasi Serikat Nasional (KSN), Indonesia
- Federation of Indonesian Trade Union (GSBI), Indonesia
- Sedane Labour Resource Centre, Indonesia
- Center for Alliance of Labour and Human Rights (Central), Cambodia
- Parti Sosialis Malaysia (PSM), Malaysia
- International Domestic Workers Federation (IDWF)
- Textile Garments Workers Federation, Bangladesh
- Australia Asia Workers Links, Australia
- Asia Floor Wage Alliance (Afwa)
- Serikat Buruh Kerakyatan (Serbuk), Indonesia

- Angkatan Peduli Insan, Malaysia
- Jaringan Rakyat Tertindas (Jerit), Malaysia
- Seksualiti Merdeka, Malaysia
- Arts For Grabs, Malaysia
- Archdiocesan Office of Human Development, Kuala Lumpur, Malaysia
- Geutanyoe Foundation
- Bhalobashi Bangladesh, Bangladesh
- Myanmar Ethnic Rohingya Human Rights Organisation Malaysia (Merhrom), Malaysia
- Save Rivers, Malaysia
- Harmonyworks, Malaysia
- The Society for the Promotion of Human Rights (Proham), Malaysia
- Justice For Sisters, Malaysia
- Women's Aid Organisation (WAO), Malaysia
- Parti Murba, Malaysia
- Kuliah Buku (Kubu), Malaysia
- Smile Education and Development Foundation, Myanmar
- Aliran Kesedaran Negara (Aliran), Malaysia
- Community Transformation Initiative (CTI), Malaysia
- Monitoring Sustainability of Globalisation (MSN), Malaysia
- Hope Organization, Malaysia
- Advocates for Non-Discrimination and Access to Knowledge (Anak), Malaysia
- Gusdurian Kuala Lumpur, Malaysia
- International Planned Parenthood Federation
- International Movement of Catholic Students (IMCS) Asia Pacific
- Civil Rights Committee of the Kuala Lumpur and Selangor Chinese Assembly Hall, Malaysia
- Malaysia Muda, Malaysia
- Malaysian Progressives in Australia
- VajraLink, Malaysia
- Electronics Industry Employees Union Southern Region, Malaysia
- Coordination of Action Research on AIDS and Mobility (Caram)
- GreenWatch, Dhaka, Malaysian
- Human Trafficking Watch, Indonesia
- Gabungan Serikat Buruh Indonesia (GSBI), Indonesia
- Front Perjuangan Rakyat (FPR)
- International League of Peoples' Struggle (ILPS) Indonesia,
- Keluarga Buruh Migran Indonesia (Kabar Bumi), Indonesia
- Institute for National and Democracy Studies (Indies), Indonesia
- People Idea Culture, Malaysia
- The Human Lens
- Indonesian Migrant Muslim Alliance (GAMMI-HK), Hong Kong
- Al Jami'ayyatus Sholeha, Hong Kong
- United Indonesian Migrant Workers Against Overcharging, Hong Kong
- Asosiasi BMI Progresif (ABP), Hong Kong
- Warkop Aremania, Hong Kong
- Association of Indonesian Migrant Workers (ATKI-HK), Hong Kong
- Jamaah Silahturohimi Blitar (JSB-HK), Hong Kong
- Nurul Hidayah, Hong Kong
- Lentera Wong Tai Sin, Hong Kong
- Al Islami, Hong Kong
- Indonesian Migrant Workers Union (IMWU-HK), Hong Kong
- Asosiasi Pekerja Indonesia Timur Tengah (ASPITT), Hong Kong

- Al Istiqomah International Muslim Society, Hong Kong
- Indonesian Migrant Workers Union Macau (IMWUM), Macau
- Beringin Tetap Maidenlike and Benevolent (BTM & B), Hong Kong
- Orang Indonesia Merah Putih (OI-MP), Hong Kong
- Migrant Resource Centre (MRC) Penang, Malaysia
- Arakan Refugee Relief Committee (ARRC), Malaysia
- Alliance of Chin Refugees, Malaysia
- Kachin Refugee Committee, Malaysia
- The Patani, Patani/Thailand
- Tamil Nadu Land Rights Federation (TNLRF), India
- IMA Research Foundation, Bangladesh
- Future Watch Movement, Bangladesh
- ASEAN Services Employees Trade Union Council (ASETUC)
- Union Network International Asia Pacific Regional Office (UNI APRO)
- Peoples Forum, Nepal
- POURAKHI, Nepal
- Transient Workers Count Too, Singapore

Individuals

- Rev Ng Kok Kee, pastor of Harvest Community Church Petaling Jaya, Malaysia
- Mahi Ramakrishnan, filmmaker/journalist
- Dr Chan Chee Khun, academician
- Anselmo Lee, activist
- Laurence Kwark, activist
- Abu Hayat, consultant on Bangladeshi Migration Corridor

Civil society organisations

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