

MALAYSIA

A joint submission by members of the Migration Working Group (MWG) and the Northern Network for Migrants and Refugees (*Jaringan Utara Migrasi dan Pelarian, JUMP*) for the 4th Session of the Universal Periodic Review, February 2009

Introduction

1. Members of MWG and JUMP¹ wish to draw attention to the human rights violations and discrimination faced by non-citizens in Malaysia, in particular migrant workers, asylum seekers, refugees, stateless persons and the foreign spouses of Malaysian citizens².
2. Malaysia hosts around 2.1 million documented migrant workers, amongst whom there are 315,703 domestic workers³. There are an additional 1 million or more migrants in an irregular situation.
3. An estimated 100,000 asylum seekers, refugees and stateless persons reside in Peninsular Malaysia. As there are no domestic laws enacted concerning these vulnerable groups and no state facilities for their reception, registration, status determination and protection, the Office of the United Nations High Commissioner for Refugees (UNHCR) performs some of these functions under its mandate. As of 1 August 2008, the UNHCR had registered 41,405 persons of concern in Malaysia, of which 11,172 were children and over 88 percent were from Burma (Myanmar)⁴. An additional 61,314 Filipino Muslim refugees reside in Sabah with documented status under IMM13 work permits⁵. Thousands of individuals remain unregistered and outside of UNHCR's protection. Both UNHCR-registered and unregistered asylum seekers, refugees and stateless persons are considered irregular migrants by most government agencies⁶, in particular the Immigration Department and the Malaysian Volunteer Corps (*Ikatan Relawan Rakyat, RELA*), who continue to arrest them for immigration offences.
4. Malaysia persistently attempts to reduce the number of irregular migrants through large-scale 'crackdowns' implemented by the Immigration Department and RELA, which focus on arresting, punishing – through fines, imprisonment, and whipping – and deporting irregular migrants. In 2007, the Immigration Department detained 57,257 individuals for various offences, double the number detained in 2005⁷, including citizens of Indonesia,

¹ The 19 organizations making this joint submission are: **Aliran Kesedaran Negara, All Women's Action Society; Building & Wood Workers International, Asia-Pacific Region; Coordination of Action Research on AIDS and Mobility, Asia (CARAM Asia); Health Equity Initiatives; Kumpulan ACTS Berhad; Labour Resource Centre; Malaysian Social Research Institute; Malaysian Trade Union Congress; Migrants Desk, Melaka-Johor Catholic Diocese; Migrant Workers Support Centre; National Human Rights Society; Penang Office for Human Development; P.S. The Children; Pusat Jagaan Kanak Kanak NurSalam, Chow Kit; Shelter Home for Children; Tenaganita; United Friendship Initiative and Women's Aid Organisation.**

² A comprehensive submission on the overall human rights situation in Malaysia is provided by the Coalition of Malaysian NGOs (COMANGO).

³ Presentation by the Immigration Department of Malaysia at the Bar Council Conference on Developing a Comprehensive Policy Framework for Migrant Labour, 18-19 February 2008, Crystal Crown Hotel, Petaling Jaya.

⁴ UNHCR Active Caseload Breakdown as of 1 August 2008.

⁵ UNHCR Country Operations Plan 2007.

⁶ The notable exceptions are the Police, who release persons registered and documented by UNHCR which they have arrested on immigration offences after verifying their status, the Ministry of Health, which provides persons registered and documented by UNHCR with 50 percent discount off foreigner rates at government hospitals, and the Attorney General who has issued instructions not to initiate prosecution for immigration related offences against persons registered and documented by UNHCR.

⁷ Farrah Naz Karim, 2008. 'Circular to blame for immigration problems', *New Straits Times Online*, Aug 24.

Myanmar, the Philippines, Bangladesh, Thailand, India, Cambodia, Pakistan, Nepal, and Vietnam.

I. BACKGROUND AND FRAMEWORK

5. Malaysia is a state party to the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. Malaysia is not party to other human rights instruments specifically relating to migrant workers, refugees and stateless persons⁸.
6. Malaysia is a member state of the International Labour Organization, and, having ratified the following fundamental conventions, is obliged to respect these commitments fully: C29 Forced Labour Convention, 1930; C98 Right to Organise and Collective Bargaining Convention, 1949; C100 Equal Remuneration Convention, 1951; C138 Minimum Age Convention, 1973; and C182 Worst Forms of Child Labour Convention, 1999⁹.
7. Malaysia is prohibited by peremptory norms of international law from (i) subjecting an individual to torture or other cruel, inhuman or degrading treatment or punishment, and (ii) *refouling* an individual to a place where s/he would be at risk of such mistreatment or other mistreatment which would qualify the individual as a refugee.
8. Malaysia has interfered with the ability of civil society to criticize its migration policies, as exemplified by the case of migrant rights activist Irene Fernandez who was sentenced to 12 months imprisonment on 16 October 2003 after seven years of trial. Ms. Fernandez was charged under section 8A(1) of the Printing Presses and Publications Act 1984 for maliciously publishing false news after releasing a memorandum entitled “Abuse, Torture and Dehumanized Treatment of Migrant Workers at Detention Camps”. An appeal to the High Court was made immediately, but due to delays, after almost five years, remains pending.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

9. On 6 March 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants sent a communication to the Government of Malaysia concerning the alleged killing of five migrant workers by RELA as a result of a raid. The Government of Malaysia provided no response¹⁰.
10. The Special Rapporteur on the human rights of migrants, Jorge A. Bustamante has also requested a visit to Malaysia, but an invitation has not been extended¹¹.

⁸ These include the Convention Relating to the Status of Refugees, Protocol Relating to the Status of Refugees, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

⁹ Malaysia has also ratified other ILO Conventions.

¹⁰ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions presented at the Human Rights Council Fourth Session, dated 12 March 2007 (A/HRC/4/20/Add.1).

¹¹ Statement of Jorge A. Bustamante, Special Rapporteur on the human rights of migrants, presented at the 61st session of the General Assembly, October 2006.

B. Implementation of International human rights obligations

Equality and non-discrimination

11. Thousands of foreign spouses of Malaysian citizens face difficulties in obtaining legal basis to remain and work in Malaysia, as well as in gaining permanent residence and citizenship status. They are also required to pay higher fees (foreigner rates) for public services such as at government hospitals and universities, and to carry their passports at all times in order to avoid arrest as irregular migrants.
12. Foreign spouses are dependent upon their Malaysian counterparts for the renewal of immigration passes that allow them to remain in Malaysia as both need to be present at the time of application. Women have been particularly vulnerable – there have been cases where foreign wives have lost their legal status when their visas expire, as their visa sponsorship was unilaterally withdrawn by their husbands because of marital disputes despite having children and living many years in Malaysia¹². Non-professional foreign husbands who marry Malaysian women risk losing their work permits and visas¹³.
13. Foreign spouses do not have an automatic right to work. If they wish to work, they can apply to the Immigration Department for an Employment Pass on a Spouse Programme¹⁴. However, they are only allowed to work for employers with a paid-up capital of RM200,000 or more and are not allowed to be self-employed.
14. Foreign wives are eligible to apply for Permanent Residency (PR) status after five years of continual residence in Malaysia on immigration passes. However, again, they are dependent upon their husbands for the application. Foreign spouses are also allowed to apply for PR status if they possess expertise/ skills and overseas working experience and plan to return and work in Malaysia. However, in practice, decisions on applications are not taken for extended periods, sometimes lasting more than 20 years.

Right to life, liberty and security of the person

15. There have been numerous reports of excessive violence by the Immigration Department and RELA¹⁵, who are both empowered to enter and search any premises for irregular migrants and to make arrests without warrants¹⁶. RELA raids, in particular, have resulted in serious injuries to migrants¹⁷ and deaths¹⁸.

¹² See JAG, 2006. 'Memorandum to The Ministry of Women, Family & Community Development by Women's Aid Organisation on behalf of Joint Action Group for Gender Equality (JAG)', available on <http://www.wao.org.my/news/20060108JAGMWFCDMemo.htm>, accessed 7 September 2008.

¹³ Immigration (Prohibition of Entry) Order 1983, 3(1) as cited in the Malaysian Non-Governmental Organisations Shadow Report: Reviewing the Government's Implementation of the Convention on the Elimination of Discrimination against Women (CEDAW), prepared by the NGO Shadow Report Group, 2005.

¹⁴ Immigration Department of Malaysia website, http://www.imi.gov.my/eng/perkhidmatan/im_ProIstimewa3.asp, accessed 7 September 2008.

¹⁵ See Annex A: Migrant Rights International and Migrant Forum in Asia, MRI & MFA (2008) Living with RELA Operations and Whipping: An Appeal by Refugees from Burma Residing in Malaysia, distributed at the 7th session of the Human Rights Council, 18 March.

¹⁶ These powers are conferred by Section 51 of The Immigration Act 1959/63 and The Essential (*Ikatan Relawan Rakyat*) (Amendment) Regulations 2005.

¹⁷ Médecins Sans Frontières (MSF) reported that 291 patients sought medical care for trauma and wounds at MSF's urban clinics during 2006. Some were incurred when people fled from raids conducted by the police and

16. There are frequent cases of abuse of power, where Police, Immigration and RELA officers extort money from migrants using arrest as a threat¹⁹. Non-citizens with valid passports and IMM13 work permits have also been arbitrarily detained by Immigration officers, threatened with charges for immigration offences and deportation, and extorted for money for their release.
17. Failure to distinguish asylum seekers, refugees and stateless persons during Immigration-RELA operations (including those carrying UNHCR documents) has resulted in their arrest – including pregnant women, children and babies²⁰. Those without UNHCR documents (including those whose UNHCR documents were destroyed by RELA at point of arrest) are not given access to the UNHCR while in detention.
18. The Home Affairs Ministry announced in December 2004 that 18,607 ‘illegal immigrants’ had been whipped since the Immigration Act was amended in 2002. These comprised 11,473 Indonesians, 2,786 Myanmarese, 1,956 Filipinos, 708 Bangladeshis, 509 Indians and 1,175 of other nationalities, each given between 1-6 strokes²¹. Another news source in August that year highlighted that 16,900 more people had been sentenced and were awaiting execution of sentence²². Interviews with migrants and refugees indicate that the caning breaks their skin; the welts take a long time to heal, and leave permanent scars across their buttocks and/or backs. Some lose consciousness from the intensity of the pain²³. Freshly whipped migrants have been sent to Immigration Detention Centres (IDCs) to be processed for deportation.
19. Conditions of detention in some prisons and IDCs remain deplorable, with severe and chronic over-crowding in some facilities²⁴, poor sanitation, as well as insufficient food and water²⁵. There are also reports of physical violence and abuse, leading to occasional hunger strikes and riots²⁶. Children are detained with adults, including unaccompanied minors.

RELA (MSF, 2007. “‘We are worth nothing” – Refugee and asylum seeker community in Malaysia’, available on www.msf.org/source/countries/asia/malaysia/2007/MSFbriefingpaper.pdf, accessed 7 September 2008.

¹⁸ BBC, 2006. ‘Malaysia’s mystery migrant deaths’, Feb 16.

¹⁹ See La Fédération Internationale des Ligues des Droits de l’Homme, FIDH (2008) Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination, available on <http://www.fidh.org/spip.php?article5357>, accessed 7 September 2008.

²⁰ See for example Amnesty International (2007) Malaysia: Fear of Forcible Return/III-Treatment, 217 asylum seekers, including children and pregnant women, UA162/07, June 27, available on <http://www.amnesty.org/en/library/asset/ASA28/001/2007/en/dom-ASA280012007en.html>, accessed 7 September 2008.

²¹ Of these, 15,214 individuals were given one stroke 3,102 were given two strokes, 245 were given three strokes, 37 given four strokes, 5 given five strokes, and 5 given six strokes (Bernama, 2004. ‘More than 18,000 Illegal Immigrants Whipped’, Dec 8).

²² Agence France Presse. 2004. ‘18,000 illegal immigrants whipped in Malaysia’, Aug 16.

²³ Also see MRI & MFA (2008) *supra fn.* 15.

²⁴ In May 2005, Malaysia’s prisons and detention centres held 45,000 inmates, most of whom were non-documented migrants. These facilities were designed to hold only 30,000 people (Agence France Presse, 2005. ‘Malaysian jails overcrowded after migrant crackdown’, May 25). In March 2007, the Prisons department reported holding 38,191 inmates in prison facilities built for 28,100, and 48,824 inmates in other facilities that could only accommodate 38,100 (Bernama, 2007. ‘New Prisons Will Tackle Over-Crowding’, Mar 21).

²⁵ See FIDH (2008) *supra fn.* 19.

²⁶ On 21 April 2008, a riot broke out in Lenggeng Immigration Detention Centre in protest of severe beating of fellow detainees. See Annex B: Human Rights Committee of the Bar Council et al. (2008) Memorandum to SUHAKAM on the Fire Incident at the Lenggeng Immigration Detention Centre, submitted 15 May.

20. In 2008, the management of IDCs was handed over from the Prisons Department to the Immigration Department, who employed RELA personnel to assist in ensuring security in the IDCs. Since the handover, there has been an increase in abuse of power, violence and corruption²⁷.
21. In 2007, Malaysia repatriated 62,879 non-citizens²⁸ through individual and group deportations. In Peninsular Malaysia, migrants from Thailand and Burma are deported at the Thai-Malaysia border. Deportees testify that Immigration officials hand them over to human smugglers/traffickers who hold them for ransom and require that amounts between RM1,400 to RM2,500 be paid for their release and subsequent travel back into Malaysia. Those who are unable to pay are sold to Thai fishing boats, brothels, or 'private owners'²⁹.
22. Group deportations have also resulted in deaths. On 4 June 2005, a two-year-old Filipino girl deported from Sandakan, Sabah died after she arrived at Mindanao, Philippines, severely dehydrated from vomiting and diarrhea³⁰.
23. Gender-based violence is significant amongst non-citizens with irregular status (including asylum seekers, refugees and stateless persons³¹). Perpetrators are aware that the survivors are reluctant to lodge police reports for fear of getting arrested on immigration offences. In 2006, MSF provided counseling to 34 rape survivors in Kuala Lumpur, typically young women who worked night shifts in restaurants and were attacked on their way home³².
24. In 2008, an unusually high death rate amongst Vietnamese migrant workers was reported – more than 300 since 2004³³. The Vietnamese Ministry of Labour, Invalids and Social Affairs state that most were caused by exhaustion, change in climate and traffic accidents. In May 2007, the torture and death of R. Ganesh was reported, an Indian migrant worker who was subjected to daily beatings, deprived of food and sufficient rest, chained in a dark room, starved and abandoned by his employers³⁴. On 20 March 2007, Daly Sui, a seven year old Chin refugee girl was abducted. Her body was found on 27 March with both hands severed at the wrist³⁵. In 2007, Migrant Care highlighted that 46 Indonesian domestic workers died that year in Malaysia without clear explanation of their cause of death from police³⁶.

²⁷ See MRI & MFA (2008), *supra fn.* 15, and Human Rights Committee of the Bar Council et al. (2008), *supra fn.* 26.

²⁸ Farrah Naz Karim, 2008. 'Circular to blame for immigration problems'. *New Straits Times Online*. August 24.

²⁹ See also the investigative report by NTV7, Siasat Mandarin Episode 45: 'Refugees for Sale', aired 3 May 2008, <http://www.ntv7.com.my>, accessed 7 September 2008, and Radio Free Asia, 2007. 'Human Traffickers Get Free Rein with Burmese Migrants in Malaysia', Feb 8.

³⁰ Fauwaz Abdul Aziz, 2005. 'Two-year-old Filipino child deportee dies, 15 warded', *Malaysiakini*, Jun 10.

³¹ The UNHCR recorded 277 cases of sexual and gender-based violence in 2005 (UNHCR Country Operations Plan for 2007). In 2004, UNHCR recorded 198 cases, one of the highest numbers reported in the Southeast Asian region (UNHCR Country Operations Plan 2006). In some cases, the violence was experienced in Malaysia.

³² MSF (2007), *supra fn.* 17.

³³ BBC, 2008. 'Malaysia deaths alarm Vietnamese', Mar 5.

³⁴ Anil Netto, 2007. 'Migrant Worker's Death Exposes Slave-like Conditions'. *Inter Press Service News Agency*, May 8.

³⁵ CHRO, 2008. 'Malaysia Must Protect Chin Children Now', April 6, available on http://eng.chro.org/index.php?option=com_content&task=view&id=159&Itemid=21 accessed 7 September.

³⁶ Abdul Khalik, 2007. 'Malaysian legal process 'unfair to maids'', *The Jakarta Post*, Aug 30.

Administration of justice and the rule of law

25. Migrant workers face many barriers to gaining redress, which makes the statutory protections available to them³⁷ illusory. In many cases, when migrant workers file cases against their employer, their employer gets their work permit cancelled; they lose their right to remain in Malaysia, as well as their right to work. As such, they are vulnerable to arrest for immigration offences; there have even been cases of individuals arrested while attending legal proceedings against their employers.
26. In order to obtain the right to remain in Malaysia, they are required to apply for a Special Pass, granted at the discretion of the Immigration authorities. This allows them the right to remain for one month at a fee of RM100 per month, renewable for a maximum of three months. In practice, it takes years for court cases to be resolved. These fees are exorbitant, especially as they are not allowed to work during this time. Many just opt to go home, forgoing their right to redress.
27. On 25 February 2008, in the case of *Lee Seng Kee v. Sukatno and Ong Thean Soo* the High Court of Malaya ruled that an irregular migrant worker could not receive compensation for loss of income on the basis that he did not have legal status in Malaysia³⁸.
28. From December 2006 to March 2007, 14 Sessions Courts were set up at IDCs to speed up the processing of immigration cases. In many cases, non-citizens who were brought to court were unable to understand the charges read to them, unable to secure legal assistance, and unable to obtain necessary assistance (e.g. by employers) to prove their legal status in the country. Migrants innocent of the charges brought against them have pleaded guilty either unknowingly or in order to avoid prolonged and indefinite detention³⁹.

Freedom of association

29. While the Trade Union Act 1958 does not prohibit migrant workers from becoming members of trade unions or taking part in trade union activities, and while section 8 of the Employment Act 1955 states that nothing in employment contracts can restrict the right of employees joining or participating in the activities of trade unions, many standard employment contracts provide an express prohibition against migrant workers becoming members of a trade union or taking part in trade union activities⁴⁰.

Right to work and to just and favourable conditions of work

30. In August 2006, the Malaysian Government introduced a system of recruitment called 'outsourcing', which contributes directly to labour trafficking. Under this system, the Malaysian government authorizes outsourcing companies to recruit and manage migrant workers, who take on the role of employers. Outsourcing companies supply businesses

³⁷ Migrant workers are covered under the Employment Act 1955, Workmen's Compensation Act 1952, Industrial Relations Act 1967, and the Occupational Safety and Health Act 1994.

³⁸ *Lee Seng Kee v. Sukatno and Ong Thean Soo*, [2008] 1 L.N.S. 226 (High Court of Malaya at Ipoh, Civil Appeal No. 12-186-01, V. T. Singham, J.). For a human rights analysis of this case, see Annex C: National Human Rights Society (2008) Case Comment on *Lee Seng Kee v. Sukatno and Ong Thean Soo*, 1 September.

³⁹ See Latheefa Koya, 2007. 'A court within a camp', *Malaysiakini*, Mar 15.

⁴⁰ See also Annex D: Ad-hoc Immigration Subcommittee of the Bar Council (2008) Recommendations arising from the Bar Council Conference on Developing a Comprehensive Policy Framework for Migrant Labour, 18-19 February.

requiring less than 50 workers⁴¹ with the number of workers needed for the time period required. Many migrant workers have been required to perform work different to what they were promised, left with no work and no pay⁴², and been given inadequate food and shelter. Breaches of terms of contract occur frequently, especially in terms of the payment of the minimum sum stipulated. In some cases, outsourcing agents physically abused the workers when they complained.

31. Foreign domestic workers continue to be vulnerable to mistreatment, abuse, long hours of work, and isolation; there have been cases of torture and deaths⁴³. From June 2004 to August 2007, Tenaganita, a Malaysian NGO, helped to rescue 148 foreign domestic workers, and recorded 1,050 violations of human rights such as rape, non-payment of wages, and physical abuse. On average, each domestic worker suffered 6-7 violations⁴⁴.
32. Foreign domestic workers are not accorded most of the statutory protections accorded to other employees (and migrant workers) under Malaysian legislation. Schedule 1 of The Employment Act 1955 defines a domestic worker as a ‘domestic servant’ and states that certain provisions of the Act are not applicable, including provisions relating to conditions for termination of contract, entitlement to number of rest days, holidays, annual leave, and sick leave; and limitations on hours of work. Foreign domestic workers often do not have standardized contracts signed between themselves and their employers that stipulate fair working conditions.
33. With the exception of the Filipino Muslims in Sabah and an estimated 30,000 Acehnese refugees who were granted IMM13 work permits in 2005, asylum seekers, refugees and stateless persons are generally considered irregular migrants and are not given the right to work. This exacerbates their vulnerability in the informal labour market and their poverty.

Right to social security and to an adequate standard of living

34. Non-citizens face discrimination with regard to access to health services because they are required to pay foreigner rates at government hospitals⁴⁵, which are unaffordable for poor non-citizens⁴⁶.
35. Non-citizens in an irregular situation are also afraid of seeking medical treatment for fear of arrest⁴⁷. At government hospitals, nurses report the presence of non-citizens unable to

⁴¹ Businesses requiring more than 50 foreign workers can either practice direct recruitment or use the services of outsourcing companies.

⁴² Tenaganita has worked on 36 cases where migrant workers received no wages (Tenaganita, 2008. ‘Fact Finding Report: Outsourcing in Labor or Trafficking in Migrant Labor?’ paper presented at a Consultation on “Outsourcing - A New Strategy In Labor Flexibilization and Its Impact On Migrant Workers”, Bar Council Auditorium, Kuala Lumpur, July 10). Members of the MWG have come into contact with stranded migrants all over Peninsular Malaysia.

⁴³ Agence France Presse, 2007. ‘Abused, raped, unpaid - in Malaysia, a refuge for domestic workers’, Dec 30; Abdul Khalik, 2007. ‘Malaysian legal process 'unfair to maids’’, *The Jakarta Post*, Aug 30.

⁴⁴ The Star Online, 2007. ‘Tenaganita rescues 148 maids’, Aug 16.

⁴⁵ For example, for outpatient treatment, citizens pay RM1 while non-citizens pay RM15. For deposits for admission into third class wards for maternity cases, citizens pay RM15 while non-citizens pay RM800. See for example the full list of charges at Hospital Kuala Lumpur, available on <http://www.hkl.gov.my/> accessed 7 September 2008.

⁴⁶ MSF (2007) reported that 61% of the asylum seekers and refugees they interviewed said that they could not afford to pay for medical treatment, *supra fn.* 17.

⁴⁷ MSF (2007) reports that 55 out of 100 asylum seekers and refugees interviewed said that they did not dare to go to a public hospital for fear of being reported and expelled from Malaysia, *supra fn.* 17.

provide valid identity documents. They are arrested upon completion of treatment. Women and their newborn babies have been arrested immediately after delivery⁴⁸, denying them necessary post-natal care.

36. Migrants held in IDCs face great difficulties getting access to healthcare. Ex-detainees complain of having suffered from skin diseases, fungus growth and difficulties getting treatment for illnesses such as stroke, epilepsy, complicated hernia, obstetric complications, ante-natal problems and abdominal problems requiring emergency healthcare. HIV detainees have been denied medical treatment. Detainees have also suffered from mental health problems, including depression, severe and chronic post-traumatic stress disorder, anxiety disorder and suicidal ideation⁴⁹. When they are brought out of IDCs to government hospitals, detainees are handcuffed to hospital beds, including pregnant women during delivery. Pregnant women, children and babies are not provided special care, facilities, or supplies while in IDCs.
37. The denial of legal recognition to asylum seekers, refugees, and stateless persons contributes to mental health morbidity. Many suffer from sleeping problems, mental illnesses and psychological distress caused by the anxiety and fear of frequent raids and harassment⁵⁰.
38. Fear of arrest prompts asylum seekers, refugees and stateless persons to seek shelter in jungles and plantations, where they live in makeshift huts without electricity, clean water and sanitation facilities⁵¹. Some of these sites have been raided by RELA personnel, who confiscate valuables and burn the shelters to the ground⁵².
39. Some migrant workers live in poor housing conditions provided by employers. They suffer from over-crowding, lack of space for food preparation and sleeping, and insufficient hygiene facilities⁵³.
40. Migrant workers are subjected to mandatory testing for more than 15 infectious diseases including HIV/AIDS, sexually transmitted diseases, tuberculosis, and malaria. Women are also tested for pregnancy. If found positive for any of these, they are subjected to deportation without treatment. The testing is often done with disregard for established best practices of consent, confidentiality, counseling and referral to treatment and support services⁵⁴.

⁴⁸ SUARAM (2005) Human Rights Report, SUARAM: Petaling Jaya.

⁴⁹ See FIDH (2008), *supra fn.* 19, and Annex E: Migration Working Group (2007) Joint Statement on RELA Taking Over Immigration Detention Centres, 7 December.

⁵⁰ MSF (2007) reports that of the 100 people interviewed, 82 suffered sleepless nights, 69 had feelings of isolation and 77 felt constant fear and worry. 56 people had experienced depression and 20% had suicidal thoughts. Frequent causes for depression included the difficulties associated with obtaining documents; the ongoing lack of security; very poor living conditions; the lack of work; and the absence of opportunity to be resettled, *supra fn.* 17.

⁵¹ Also see MSF (2007) *supra fn.* 17.

⁵² See for example, CHRO (2008) RELA Burns Down Refugee Shelters in Malaysia, available on http://eng.chro.org/index.php?option=com_content&task=view&id=181&Itemid=21, accessed 7 September 2008.

⁵³ Statement from the Malaysia National Consultation on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 13-14 August 2008, Shah Alam, Selangor, available on http://aliran.com/index.php?option=com_content&view=article&catid=55%3A2008&id=694%3Aprotecting-migrant-workers-rights-in-asean&Itemid=40, accessed 7 September 2008.

⁵⁴ CARAM Asia (2007) State of the Health of Migrants 2007: Mandatory Testing, CARAM Asia: Kuala Lumpur.

Right to Education

41. Asylum seeking children, refugee children, stateless children as well as children of migrant workers are not given primary education in government-run schools. With the exception of a small number of children who attend schools run by refugee/ migrant communities and NGOs, these children do not have any access to education. These informal programmes are also not given recognition by the Ministry of Education, and these children do not have access to official exams.

Right to Seek and Enjoy Asylum

42. Asylum seekers held in prisons and IDCs who were not yet documented by the UNHCR at the time of arrest are not allowed access to the UNHCR, and are therefore deprived of their right to seek asylum. They are also not given any protection against whipping and deportation. There have been cases of *refoulement*⁵⁵.

III. RECOMMENDATIONS

1. Adopt laws and regulations concerning the status of asylum seekers and refugees in line with international standards to ensure their protection as recommended by the CEDAW Committee and the Committee on the Rights of the Child (CRC) and take measures necessary to fully respect the international customary norm of non-*refoulement*.
2. Enact comprehensive laws and establish procedures to safeguard the rights of migrant workers, including migrant domestic workers, as recommended by the CEDAW Committee.
3. Act immediately on the other recommendations of the CRC, including:
 - Carefully and regularly evaluating existing disparities in the enjoyment by children of their rights, taking necessary steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups
 - Improving the birth registration system of non-Malaysian children
 - Taking urgent measures not to detain children for immigration proceedings, unless necessary for their best interests, and then for the shortest time possible
 - Ensuring all children have access to health and therapeutic services, and strengthening mechanisms to protect all children from abuse and neglect
 - Providing free and formal primary, secondary and other forms of education to all children and access to official exams for those in informal education
4. Extend an invitation to the Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and the Special Rapporteur on the Human Rights Situation of Migrants and the Working Group on Arbitrary Detention.
5. Halt the current plans for mass deportations and ensure that measures are taken to ensure that the fundamental rights of all non-citizens are respected in any expulsion process.

⁵⁵ The U.S. Committee for Refugees and Immigrants (USCRI) reports that in 2007, nearly 2,300 asylum seekers and refugees were deported to Thailand, of which at least 14 were deported by Thai authorities to Myanmar, of which 3 were arrested by Myanmar authorities upon arrival (USCRI, 2008. World Refugee Survey, available on <http://www.refugees.org/article.aspx?id=2114&subm=179&area>About%20Refugees>, accessed 7 September 2008).

6. Revoke the existing enforcement powers of RELA to arrest migrants.
7. Issue an instruction to all law enforcement agencies to respect UNHCR documents and refrain from arresting holders of these documents. Ensure that UNHCR has free and full access to all persons of concern in all places of detention, and release refugees while durable solutions are found.
8. Abolish whipping as a judicial punishment, including under the Immigration Act.
9. Ensure that conditions in police lock-ups, prisons and immigration detention centres are consistent with the 1955 UN Standard Minimum Rules for the Treatment of Prisoners, the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice, the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the 1990 Basic Principles for the Treatment of Prisoners and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.
10. Fully implement and enforce the Anti-Trafficking in Persons Act 2007 in order to reduce both labour and sex trafficking.
11. Ensure that non-citizens have effective means of obtaining redress for grievances by ensuring they have the right to be heard, the right to remain in Malaysia, and the right to work while awaiting adjudication.
12. Ensure that foreign spouses of Malaysian citizens have the right to pursue their right to remain in Malaysia without being dependent on the goodwill of their Malaysian spouse, the right to work unconditionally, as well as speedy processing of applications for permanent residence and citizenship status.
13. Remove mandatory testing and change deportation policies of migrant workers for HIV and other treatable health conditions by amending part III of the Prevention and Control of Infectious Diseases Act 1988 and the Immigration Act 1959/63.
14. Last but not least, to ratify the rest of the international core conventions and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention Relating to the Status of Refugees and its Protocol, the Convention Relating to the Status of Stateless Persons, the Convention on the Reduction of Statelessness, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementary to the United Nations Convention against Transnational Organized Crime.

Annex A: Migrant Rights International and Migrant Forum in Asia, MRI & MFA (2008) Living with RELA Operations and Whipping: An Appeal by Refugees from Burma Residing in Malaysia, distributed at the 7th session of the Human Rights Council, 18 March.

Annex B: Human Rights Committee of the Bar Council et al. (2008) Memorandum to SUHAKAM on the Fire Incident at the Lenggeng Immigration Detention Centre, submitted 15 May.

Annex C: National Human Rights Society (2008) Case Comment on Lee Seng Kee v. Sukatno and Ong Thean Soo, 1 September.

Annex D: Ad-hoc Immigration Subcommittee of the Bar Council (2008) Recommendations arising from the Bar Council Conference on Developing a Comprehensive Policy Framework for Migrant Labour, 18-19 February.

Annex E: Migration Working Group (2007) Joint Statement on RELA Taking Over Immigration Detention Centres. 7 December.