

TRAPPED

THE EXPLOITATION
OF MIGRANT WORKERS
IN MALAYSIA

EQUALITY IN LAW
IS A HUMAN RIGHT

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



Amnesty International Publications

First published in 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2010

Index: ASA 28/002/2010
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable.

Front cover photo: The KLIA Immigration Depot is so overcrowded that detainees sometimes cannot stretch out to sleep, July 2009.

© Amnesty International (Photo: Vinod Ravindranathan)

Back cover photo: Migrant construction workers in Kuala Lumpur, Malaysia, July 2009. © Amnesty International

CONTENTS

1. Summary	5
2. Migrant labour in Malaysia	10
The international legal framework	11
3. Abuse and exploitation of migrant workers	13
Ineffectively regulated labour recruitment	14
The process of recruiting migrant workers	14
Restrictions on entry	15
Labour outsourcing	15
Recruitment agents	16
Lies and coercion	17
Deception in recruitment	18
Exorbitant debt	21
Wage manipulation	23
Failure to provide contracts	24
Withholding of passports and work permits	24
The failure of employers and agents to obtain proper work authorisation	25
Recruitment of underage workers	29
Forced labour	30
Other labour exploitation	33
Non-payment of wages and multiple deductions	34

Unreasonable working hours and conditions.....	38
Physical and verbal abuse.....	39
Unsafe working conditions	42
Accidents and illness	45
Living conditions	46
Trafficking in persons	49
4. Ill-treatment and extortion by police and RELA agents.....	55
Police abuses	57
Abuses by RELA agents	60
5. Malaysia's protection gap	63
Laws and policies governing the employment of migrant workers.....	63
The lack of redress.....	65
Workplace inspections.....	66
Individual claims	66
6. The criminalisation of migration.....	72
Stunt politics and moral blinders	72
Illegal entry and other immigration offences.....	73
Caning and other sentences	74
Detention in deplorable conditions.....	75
An incoherent detention policy	82
7. Recommendations.....	85

1. SUMMARY

“I came to Malaysia in 2007 because I had to help support my parents and my two younger siblings. We were poor and did not have enough money. An agent came to my village and spoke to my dad. The agent spoke to my father and told him that if I were to work in Malaysia, I would be paid 30 ringgit a day. The agent asked for 2 million taka, which we raised and paid. My father borrowed the money from friends, sold some of his cows and also sold a house that he owned. The agent told me that I would be sent to Malaysia within three months of the payment, but I had to wait eight months.

“Once I reached KLIA airport, no one came to meet me, so I was taken to a holding area at the airport car park. There, I had to stand in sewage because there was a burst pipe. The urine was above my ankle level, and I was forced to stand in it together with about 55 others for three hours. We were in a holding area. There were many more being held in other areas. There were probably between 100 and 200 other newly arrived workers also there.

“I called the agent, who told me to wait for the employer to come and collect me. After a night in holding, the employer came, and 55 of us were released to him after completing the biometric scans. We were then taken by bus to Shah Alam by a Bangladeshi agent named Ashraf. In Shah Alam, we were taken to a house where we were all kept in a room upstairs. I had my passport for about three days, after which the agent took it from me. We were kept in the house in Shah Alam for about six days. We were given some food, but the place was very small for all 55 of us. It was very hot, as there were no fans, and there was only one toilet. There was only a light. Although we were not locked in, we were afraid to leave the place because it was a strange new place and we had no documents. No one came to see us. The Bangladeshi agent told us that our employer would come there to see us and take us away.

“When I asked Ashraf about the employer or where the employer was located, I was just told to wait. At about the eighth day of being in the house, the agent told us to leave and to go away and find work ourselves. I asked for my passport, but the agent said I would only get my passport if I paid 1,000 ringgit [\$290] because my passport was with the immigration. I bargained with him and asked him for the amount to be reduced to 500 ringgit [\$145]. I then borrowed money from my uncle and friends to get the money and paid the 500 ringgit in person to him. I got my passport.

“My uncle then found me a job in the construction industry, next to the Damansara immigration office. I worked there for about two months but was not paid a single cent for my work. I worked about ten hours a day with no days off and also worked weekends. I did ask for my wages, but I was always told that I would be paid the following month. At the end of two months, the employer suddenly ran away. He disappeared from the site. I have gone back to the site many times to find him but did not see him there.”

—Husain, age 21, interviewed in Kuala Lumpur

Drawn by the promises of jobs in Malaysia, thousands of men and women travel there every year from Bangladesh, India, Indonesia, Nepal, Vietnam and other countries in the region. Once they arrive, many toil for 12 hours each day or longer, often in unsafe conditions, sometimes enduring physical and verbal abuse from their employers. Many do not receive the wages they were promised in their home countries. The government of Malaysia has a

responsibility to prevent such abuses, which can include exploitation, forced labour, and trafficking in persons. Too often, the state fails to do so.

Migrant workers who come to Malaysia may find, in fact, that everything their recruitment agents told them in their home countries about their new jobs is untrue—the amount they will be paid, their employer, the type of work they will do. Some agents promise jobs that do not exist.

Many never receive a contract at all; others are handed documents in English, which they may not be able to read, just before they depart for Malaysia.

Migrant workers typically hand over large sums of money to their recruitment agents in order to secure jobs in Malaysia. Most workers pay at least US\$1,000; workers from Bangladesh pay more than three times that amount. To raise the money, they and their families sell land or take out loans, often at exorbitant rates of interest. The need to repay the debt they incurred to come to Malaysia limits their choices.

For many, returning to their home countries is not an option, even though they realise that they are being exploited. The amount of money they owe, on loans they have taken out on the promise of good jobs, is too large, and they find themselves in situations akin to debt bondage.

Some workers have no choice at all—they are compelled to work against their will, locked into their workplaces and threatened with violence. As a practical matter, most workers cannot leave their employers without considerable risk. Nearly all employers hold their workers' passports, documents that workers must be able to present on demand to law enforcement authorities, and which they would need to return to their home countries. Coercive practices such as these are markers of forced labour.

In some instances, agents recruit workers who are under the age of 18 and obtain false passports to conceal that fact. Underage workers are more likely to be cheated, more vulnerable to other forms of abuse, and more likely to suffer injuries on the job. In many cases, they are performing work they should not be doing—Malaysia is obligated under international law to protect children under age 18 from hazardous work and economic exploitation.

Malaysia has some 2.2 million documented foreign workers, almost 20 per cent of Malaysia's workforce. Approximately the same number is undocumented.

Many migrant workers in Malaysia are the victims of trafficking in persons—they are recruited through fraud or deception for the purpose of exploitation. In fact, the US Department of State's 2009 report on trafficking gave Malaysia the worst designation, Tier 3, placing it among those countries that do not comply with minimum standards to combat trafficking and are not making significant efforts to do so.

Trafficking is perpetrated by individual recruitment agents, but the government of Malaysia facilitates this abuse. Loose regulation of agents, abusive labour laws and policies, and the

practice of allowing employers to confiscate their workers' passports allow trafficking to flourish.

Some Malaysian immigration authorities themselves engaged in trafficking in persons by delivering immigration detainees to traffickers operating on the Thai border. Amnesty International identified over a dozen cases of individuals who were trafficked in this way, sometimes more than once, between 2006 and early 2009.

In principle, most migrant workers are covered by the employment laws generally applicable in Malaysia. In practice, however, the lack of effective enforcement and the dependence of migrant workers on their employers and recruitment agents mean that they have few or no safeguards against abuse.

Domestic workers have even less recourse when their rights are violated. Domestic work is systematically excluded from most labour law protections. As a result, a form of work that is generally performed by women and girls receives less protection than other types of labour. No compelling justification exists for the exclusion of domestic work from the labour laws. In fact, the isolated nature of domestic work creates particular risks of abuse, compelling the conclusion that more protection, rather than less, is required. The exclusion of domestic workers from most labour law protections violates the right to freedom from discrimination.

Migrant workers are regular targets for ill-treatment and extortion by police and agents from the People's Volunteer Corps (Ikatan Relawan Rakyat or RELA). Police are authorised by law to investigate immigration status; RELA had the same authority until mid-2009. Both police and RELA agents frequently abuse that authority, treating stops as opportunities to make money.

Much of Malaysia's approach to migration is effectively to criminalise it, even though the country could not function without migrant labour. Large-scale public roundups in markets and on city streets and indiscriminate, warrantless raids on private dwellings in poorer neighbourhoods send the message that being poor and foreign—regardless of immigration status—is automatically suspicious. An "arrest now, investigate later" approach to immigration enforcement prevails. Too often, in fact, the government's approach targets the victims of human rights abuses rather than those who commit abuses.

Losing one's legal status is easy—many migrant workers become undocumented through no fault of their own when their employers fail to renew their permits. The emphasis on enforcement is often unburdened by a sense of justice; in some cases documented by Amnesty International, workers who complain about mistreatment have been themselves arrested for technical violations of the immigration laws.

The penalties for being undocumented are severe. Irregular migrants are subjected to fines, imprisonment and deportation. Judges may and often do impose caning on migrants who are convicted of illegal entry: Nearly 35,000 migrants were caned between 2002 and 2008.

Those who are arrested are placed in immigration detention centres under conditions that fall far short of minimum international standards. The three facilities inspected by Amnesty International were overcrowded in the extreme—in fact, some detainees reported that they

could not lie down to sleep without touching their neighbours on either side. They lack bedding, regular access to clean water, and medication for those who fall ill. Almost universally, detainees complained that they often went hungry and that what food they did receive was sometimes rotten or undercooked. Detainees sit in their cells all day with little or nothing to do, often spending days without going out into the open air. There is no opportunity for exercise, organised worship, or other activities. Unsurprisingly, diseases spread quickly in such conditions, and fights between detainees are common. In addition, Amnesty International heard reports of violence at the hands of guards. Moreover, detainees under age 18 are held together with adults, in contravention of international law.

Persons who are convicted of illegal entry may be sentenced to up to six strokes of the *rotan*, a thin wooden cane. Caning is deeply humiliating and extremely painful. It leaves deep welts on the buttocks that take days to heal sufficiently to dress and move ordinarily without re-opening the wounds. The practice violates the international prohibition on torture and other forms of cruel, inhuman and degrading treatment or punishment.

Malaysia is also a destination for refugees and asylum seekers. At least 90,000 and as many as 170,000 or more refugees and asylum seekers, mostly from Myanmar and the Philippines, are in the country. Malaysia is not a party to the 1951 Refugee Convention or its 1967 protocol, the major international instruments governing the protection of refugees, and Malaysian law makes no distinction between refugees and undocumented migrants. As a result, refugees and asylum seekers can be arrested, detained, and prosecuted for immigration offences, and they may be sentenced to caning and then deported. In addition, their precarious status makes them especially vulnerable to abuses in the workplace and at the hands of police and RELA agents.

As a matter of priority, Amnesty International calls on the government of Malaysia to:

- Undertake an immediate review of the labour outsourcing system for migrant workers, with a view to its reform.
- Make the withholding of passports and other identity documents an offence subject to appropriate penalties, and immediately amend policies and memoranda of understanding accordingly.
- Prosecute recruitment agents and employers who engage in fraud or deception in recruitment for the purpose of labour exploitation, under Malaysia's Anti-Trafficking in Persons Act.
- Substantially increase workplace inspections and refer for prosecution employers who have engaged in forced labour or other forms of labour exploitation. The primary focus of these inspections should be on abusive practices in the workplace rather than individual workers' immigration status
- Promptly investigate all complaints of ill-treatment, extortion or other misconduct by police or others acting under colour of law, including RELA agents.

- Ensure that places of detention, including immigration depots, comply with minimum international standards.
- Strengthen human rights protections in memoranda of understanding with sending countries, including through agreements for the monitoring of recruitment agents who operate in sending countries.

A complete list of recommendations appears at the end of this report.

* * *

A four-person Amnesty International delegation visited Malaysia in July 2009 and conducted private interviews with over 200 documented and undocumented migrant workers. The delegation met with government officials, employers, recruitment agents, lawyers, staff with nongovernmental organisations, members of religious groups, and diplomatic missions. The delegation also inspected three immigration detention facilities near Kuala Lumpur, observed hearings before a special court at one of these facilities, and reviewed records of ongoing and completed administrative hearings handled by the Labour Department and the Industrial Relations Department.

Interviews with migrant workers were voluntary and followed a semi-structured format. They were conducted in English or Bahasa Malaysia, with translation when necessary, with the exception of a handful of detainee interviews conducted in French and Spanish by researchers fluent in those languages. All interviews were conducted in the Kuala Lumpur federal territory and the states of Selangor and Pahang, although some workers described experiences they had had elsewhere in Peninsular Malaysia. The names of all workers have been changed to protect their privacy.

This report does not examine the situation of migrant workers in the East Malaysian states of Sabah and Sarawak, which have their own labour laws and immigration procedures.

Amnesty International appreciates the willingness of the government of Malaysia to meet with its delegates at length and to afford access to immigration detention facilities.

2. MIGRANT LABOUR IN MALAYSIA

Nearly one in five workers in Malaysia is a documented migrant worker—there are some 2.2 million documented foreign workers in the country, and the estimated total workforce is 11.4 million, according to official statistics.¹ “Twenty-five percent of our workforce is based on foreigners,” the Secretary General of the Ministry of Home Affairs told Amnesty International, rounding the numbers up for emphasis.²

In addition, Malaysian immigration authorities estimate that there may be as many as an additional 2.2 million undocumented workers in Malaysia,³ meaning that migrant workers may make up nearly one third of Malaysia’s labour force.

The high number of migrant workers, both documented and undocumented, is no accident. Beginning in the 1970s, aggressive industrialisation required more labour than was available domestically. Malaysia signed memoranda of understanding with Bangladesh, Indonesia, the Philippines and Thailand in the mid-1980s to provide for the recruitment of migrant workers in the construction and plantation sectors and as domestic workers.⁴

In part as a result of these policies, Malaysia is now one of the largest receiving countries of migrant workers in Southeast Asia.⁵ It has memoranda of understanding with seven source countries, according to officials with the Ministry of Home Affairs. Workers from 15 countries come to Malaysia to work in construction, manufacturing, and services, on plantations and in other agricultural work, and as domestic workers.⁶

The government has spoken in recent years of reducing Malaysia’s dependence on foreign workers. In Amnesty International’s meeting with the Secretary General of the Ministry of Home Affairs, for example, he described the country’s reliance on foreign labour as “not good for the country, especially in the economic downturn we have now.”⁷

Officials with the Ministry of Home Affairs told Amnesty International that the government aims to reduce the number of migrant workers by 100,000 from 2009 to 2010 and by a further 200,000 from 2010 to 2015. As part of this initiative, in early 2009 the government announced a freeze on the intake of migrant workers in the manufacturing sector, namely those who work with electronics, textiles, and electrical products. It also announced that it would double the charge, or levy, for obtaining work permits for all migrant workers with the exception of domestic workers, and suggested a policy change that would allow migrant workers to stay in Malaysia for no more than five years. In another change to the levy system, the purpose of which “is to make foreign workers more expensive,” according to one official with the Ministry of Human Resources, beginning in April 2009 the cost of the levy must be borne by employers and not by the workers.

In a related measure, Prime Minister Najib Abdul Razak announced in November 2009 that the intake of Bangladeshi workers would continue to be suspended. According to news accounts, he explained that the purpose of the freeze, which began in October 2007, was “to prevent unscrupulous agents from exploiting the workers” and said that the move was consistent with the government’s decision to reduce its dependence on migrant workers.⁸

Employers were critical of these measures, saying that some of these policies meant that they would lose their most experienced workers.⁹ Others noted that by favouring incoming workers over experienced ones, the government was making it easier for those employers that were looking for the cheapest migrant labour. And many were sceptical that Malaysia would actually reduce its dependence on migrant labour.

In fact, later in 2009 the government retreated on many of the specific measures it had announced earlier in the year. It postponed its plan to double levy charges for work permits and announced a resumption of foreign recruitment in the manufacturing sector. At the time of writing, it was not clear to what extent the policy changes announced in early 2009 would be implemented.

THE INTERNATIONAL LEGAL FRAMEWORK

Malaysia has pledged to suppress forced labour, slavery and slave-like practices, and trafficking in persons, each of which is prohibited under international law. It has made international commitments to set a minimum age of 15 for employment, to eliminate hazardous child labour for any child under age 18 and to provide other protections for children under the age of 18. These obligations are set forth in the Forced Labour Convention, 1930 (ILO Convention No. 29); the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the UN Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons; the Minimum Age Convention (ILO Convention No. 138); the Worst Forms of Child Labour Convention (ILO Convention No. 182); and the Convention on the Rights of the Child.¹⁰

In addition, Malaysia has committed to uphold the human rights protections defined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In particular, Malaysia has an obligation under CEDAW to guarantee equality under the law.¹¹

Malaysia has also ratified International Labour Organization (ILO) conventions in which it undertakes to establish a labour inspection system to ensure safety in the workplace, take steps to protect wages from unreasonable deductions, protect the right to collective bargaining and ensure equal pay for equal work by men and women.¹² As a member of the ILO, Malaysia has committed to uphold fundamental principles and rights in four categories—freedom of association and collective bargaining, the elimination of forced and compulsory labour, the elimination of discrimination in employment, and the abolition of child labour—as set forth in the ILO Declaration on Fundamental Principles and Rights at Work.¹³

Malaysia has a responsibility to safeguard all persons from infringements of these rights by third parties. Many of the cases described in this report involve abuses of the rights of migrant workers by private recruitment agents and employers, individuals who are not state officials. Under international law, Malaysia is obliged to exercise due diligence to protect individuals against abuses of their rights by non-state actors.¹⁴

The ILO has identified eight core conventions that directly relate to fundamental principles and rights at work. Malaysia is a state party to all but three. It has never ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Discrimination (Employment and Occupation) Convention (No. 111). It was a state party to the Abolition of Forced Labour Convention, 1957 (No. 105), but it denounced its ratification of that treaty in 1990, meaning that it is no longer bound by the treaty's terms.¹⁵

Malaysia also has not ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, or the Migrant Workers Convention.¹⁶ Nevertheless, these treaties are important sources of international law. Many of the provisions of these treaties reflect international consensus and evolving state practice, and some of their provisions are accepted principles of customary international law. Accordingly, these treaties provide useful guidance in determining Malaysia's obligations with respect to migrant workers under those treaties that it has ratified.

The Association of Southeast Asian Nations (ASEAN), of which Malaysia is a member, issued a Declaration on the Protection and Promotion of the Rights of Migrant Workers in December 2007. Although this declaration is itself not binding, it reiterates many of the international obligations previously acknowledged by Malaysia and other member states. The obligations set forth in the declaration include the duties to promote fair employment protections, provide migrant workers who are victims of abuses with adequate access to the justice system for protection and redress, and facilitate consular access when a migrant worker is arrested.¹⁷ ASEAN member states are negotiating the terms of a binding Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers, but news accounts reported that these negotiations stalled in January 2010 after Malaysia did not agree on several key points under discussion.¹⁸

3. ABUSE AND EXPLOITATION OF MIGRANT WORKERS

“If the government can take care of these problems, even if the earning and work is not good, we can feel at peace. I had a dream before coming here; now it’s gone.”

—Thirty-six-year-old male factory worker from Nepal

Migrant workers come to Malaysia to escape poverty and to provide for their families. Once they arrive, however, many workers toil in conditions that amount to labour exploitation. They may not be paid for months of work or may take home little or no money each month after paying their employers the monthly charge for their work permit renewal, wage deductions for mistakes, and charges for food and rent. Most work long hours, including extra hours for which they are not paid. Many work every day of the week. Verbal and physical abuse is common; women are sometimes subjected to sexual harassment and assault, including rape.

Many workers operate hazardous equipment or handle dangerous chemicals, often without protective gear or guidance on how to protect themselves. When they suffer accidents at work, their employers may refuse to pay for their care and in some instances pressure them to return to their home countries. Most live in substandard conditions.

Much of the work performed by the migrant workers interviewed for this report constitutes forced labour. Workers may be confined to their workplace, threatened with violence, or otherwise compelled to remain on the job. Many have taken out large debts at high rates of interest, relying on the promise of a good job in Malaysia, and find themselves in situations akin to debt bondage.

And many workers are recruited on the basis of deception or fraud—they are lied to about the work they will perform, the wages they will receive, the hours they will work and other conditions of employment. When workers are recruited on the basis of deception or fraud into forced labour or other forms of labour exploitation, they are victims of trafficking in persons.

Trafficking is most often perpetrated by private actors, but Malaysia has a responsibility to prevent trafficking from happening and to address it when it does occur. Its duty to exercise due diligence requires it to investigate reports of trafficking fully, prosecute and punish those

responsible, and support those who are victims of trafficking. It must also ensure that its policies do not allow trafficking to continue.

Malaysia's responsibility is not limited to the prevention and punishment of trafficking. More generally, the state must exercise due diligence by taking reasonable measures to ensure that the human rights of migrant workers are respected and protected, including the rights to freedom from discrimination, fair wages and equal remuneration, safe and healthy working conditions, adequate health care in case of accidents, and freedom from violence. The failure to take reasonable measures to prevent these abuses and to address them when they do occur is a human rights violation for which the state is accountable.

Labour sending countries have similar obligations, and they can do more to protect the rights of their nationals during the recruitment process and once they are working in Malaysia. The Philippines, for example, by law "deploy[s] overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected."¹⁹ Its Overseas Workers Welfare Administration coordinates pre-departure subsidised loans for workers, life and health insurance, repatriation in case of maltreatment and legal assistance in labour disputes.²⁰ The government of the Philippines has negotiated memoranda of understanding that include minimum wages, a minimum number of days off, and other conditions of employment for its workers; as a result, its domestic workers are considered the best paid and best protected of any domestic workers in Malaysia. Other sending countries should implement protections along these lines.

INEFFECTIVELY REGULATED LABOUR RECRUITMENT

Malaysia has a myriad of mechanisms for the regulation of foreign recruitment. At least three different ministries oversee aspects of foreign recruitment, coordinated by a cabinet committee, and the implementation of policies is the responsibility of over a dozen agencies within those ministries. Although foreign labour appears to be tightly controlled, excessive and cumbersome rules, gaps in regulation and the inevitable red tape that bureaucracy produces combine with a climate of impunity on the ground to create a system in which exploitation thrives.

THE PROCESS OF RECRUITING MIGRANT WORKERS

The Ministry of Human Resources is responsible for overseeing the implementation of the National Labour Policy, including the employment of migrant workers and the protection of employment opportunities for citizens. The Ministry of Home Affairs, of which the Immigration Department is a part, is responsible for immigration matters and the processing and approving of applications for migrant workers, determining the source country, issuing and revoking employment visas and preventing irregular employment. As part of the application approval process, it takes steps to verify that the company needs a particular number of workers, officials with the ministry explained. The Immigration Department administers and enforces the Immigration Act and its corresponding rules, including by carrying out the deportation of migrant workers who work without authorisation. The Ministry of Health is responsible for health matters and approves health clinics, which screen migrant workers on entry and then on an annual basis. National policy on the employment of foreign

workers is developed by a Cabinet Committee on Foreign Workers and Illegal Employment, which is chaired by the Deputy Prime Minister.

In an effort to streamline the process for employers, a One-Stop Centre at the Immigration Department handles applications to recruit migrant workers. Employers who seek to hire migrant workers must demonstrate that efforts to recruit locally have failed; they must also establish that they have jobs for the number of foreign workers they seek to employ. The Ministry of Human Resources approves applications for recruitment.

Prospective workers who are approved through the One-Stop Centre usually enter Malaysia on a “calling visa,” which allows entry an initial period of one or two months for their employers to complete the paperwork for their work permits.

RESTRICTIONS ON ENTRY

Before the work permit itself can be granted, prospective workers must pass a health check. The Foreign Workers Medical Examination Monitoring Agency (FOMEMA)—actually a company, Fomema Sdn. Bhd., whose majority owner is the Government of Malaysia’s investment holding arm, Khazanah Nasional Bhd.—manages the foreign worker health screening system in Peninsular Malaysia.²¹

Fifteen medical conditions automatically disqualify prospective workers, including HIV seropositive status and pregnancy. Workers who are renewing work permits must pass the same health tests.

States may place conditions or restrictions on the entry of non-citizens, including on public health grounds.²² But HIV status is not a reasonable basis for such restrictions. As the International Guidelines on HIV/AIDS and Human Rights note, “There is no public health rationale for restricting liberty of movement or choice of residence on the grounds of HIV status. . . . [A]ny restrictions on these rights based on suspected or real HIV status alone, including HIV screening of international travellers, are discriminatory and cannot be justified by public health concerns.”²³

Pregnancy, of course, is not a disease, communicable or otherwise; the rationale for the bar on prospective workers who are pregnant appears to be the desire to avoid workers who will not be productive for an extended period. In addition to the bar on entry, under current immigration policies a migrant worker who becomes pregnant is subject to immediate dismissal; her work permit is automatically revoked.

Migrant workers are not allowed to bring their families to Malaysia.

LABOUR OUTSOURCING

An outsourcing system introduced in 2007 has diluted government oversight. Under this system, workers’ permits are not attached to particular employers. Instead, workers are the responsibility of recruitment agents, who contract with employers to supply workers for

particular periods of time, with the ability to shift workers among employers to meet demands for labour.

The flexibility of this system is attractive to many employers. A trade union representative suggested that the system was also a response to an Industrial Court decision, upheld by Malaysia's highest court, to require employers to respect collective bargaining agreements for all workers, including migrant workers who were not members of the union. (Workers in an outsourcing arrangement are subcontracted to employers on terms agreed to between the employers and the recruitment agents. Because these workers are not their direct employees, such arrangements allow employers to avoid the need to extend the benefits of collective bargaining agreements to them.)

Amnesty International found that workers who were brought in with promises of secured employment under outsourcing arrangements spent prolonged periods without jobs. For example, Azhaar, a 28-year-old Bangladeshi worker, described what happened when he came to Malaysia with three other men:

Upon arrival at the KLIA airport, we were taken by an agent to a house in Kuala Lumpur where we were kept for about a month. There were 50 of us kept there at the house. We were fed very little. We were given a plain bread bun to eat at 10am and again at 6pm. We were also given a bottle of mineral water to drink. We were occasionally given some uncooked rice to cook on our own. The agent then sold us to various employers.

Malaysia has issued nearly 300 outsourcing licenses to recruitment agents, officials with the Ministry of Human Resources told Amnesty International.

RECRUITMENT AGENTS

Recruitment agencies are largely unregulated in sending countries. The fees they charge are high, at least \$1,000 in most countries and \$3,000 or more in Bangladesh. Alternatively, in some cases recruitment agents take the first five or six months of a worker's salary, meaning that workers are not paid at all during this initial period. Such arrangements are common for domestic workers from Indonesia; a handful of workers from other countries described similar practices in their cases.

Some source countries take a direct role in the recruitment process. For example, Minh, a 21-year-old Vietnamese factory worker, told Amnesty International, "A Vietnam labour officer got me my job in Malaysia. The [Vietnamese] government has an office in each district to help recruit workers. This is for those seeking employment overseas only." Minh paid a fee of 19 million dong, about \$1,030.²⁴ He continued:

I was told that the 19 million Vietnamese dong would be used for training, learning English, FOMEMA health tests, airfare, and other processing fees. I received lessons in the English language about two times a week for about three months. I did not receive any other training. I did ask the labour officers in Vietnam what type of work I would be doing, but they told me that it could be anything and that I would only find out when I got to Malaysia.

From the descriptions given by other workers from Vietnam, it seemed that the government recruitment agency's primary function was revenue collection. "The only training that they had provided me with was in English and in learning some basic information about Malaysia such as the Malaysia culture, the population, that it was a Muslim country and other such general information. I was not told what type of job I would get or promised any specific wage," said Phuc, age 20, another factory worker.

Training programmes, even ones as basic as the Vietnamese workers described, are not common in other source countries. The Philippines provides training for the workers it sends abroad.²⁵ Indonesia requires domestic workers, but not those working in other sectors, to complete a training course.²⁶

In every source country, local recruitment agents—regulated or not—match prospective workers with employers or outsourcing agents. For this service, essentially the promise of a job, prospective workers either pay their local agents or promise to pay the agents once they are earning a salary.

The amounts they pay vary widely by country of origin. Bangladeshi workers consistently reported paying 11,000 to 12,500 Malaysian ringgit (\$3,205 to \$3,645), with some paying as much as 15,000 ringgit (\$4,375). Vietnamese workers told us that they paid 19 to 24 million dong, between \$1,030 and \$1,275, to arrange work. Nepali workers typically paid between 70,000 and 100,000 Nepali rupees, or \$935 to \$1,335. In every case, these sums are substantial ones.²⁷ Many workers take on significant debt at high interest rates to raise these sums, ending up in situations akin to debt bondage, as detailed below in the Exorbitant Debt section.

Indonesian workers frequently told Amnesty International that they had paid nothing up front, instead agreeing to pay in instalments once they started working. "I came using an agent and had my wages cut for about eight months at a rate of 200 ringgit [\$58] a month," reported Aini, a 30-year-old woman who worked for an electronics company in Kuala Lumpur. Some learned after arriving in Malaysia that they would be expected to work without pay for several months. Such instalment arrangements are in breach of the Protection of Wages Convention, an ILO treaty ratified by Malaysia. Article 9 of the Protection of Wages Convention provides: "Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited."²⁸

LIES AND COERCION

Many migrant workers get their first indication that their agents' assurances may be little more than empty promises when they land at the airport. If their agents do not meet them on arrival, they wait in an immigration holding area until the agents pick them up. When agents have multiple groups arriving, they often make one trip to the airport even if it means that the first group of workers will spend several days in the holding area.

Workers in the holding area are effectively in detention. They are not free to leave the holding area, an uncomfortable facility that does not provide basic requirements of health, hygiene or human dignity. They may not receive any information about why they are there or when they will be allowed to leave.

Describing his first days in Malaysia, a 46-year-old Nepali farm worker said, “There were six people in my group. We didn’t have any food. Our stomachs were aching. We sat on the floor for three days at the airport. . . . Immigration didn’t give us any food for three days.” Some workers told Amnesty International that snacks are available for purchase in the holding area, but most cannot afford them. The man continued, “When we came, we didn’t know any bit of Malay, so we could not speak to anybody. After the second day, a guy from upstairs came down to translate, so that’s when we learned that the agent had not come. For the first two days, we didn’t know anything.”

After they are allowed to enter the country and begin work, they often find themselves in circumstances that are markedly different from those their agents described to them before they left their home countries.

These abusive practices are perpetrated by private individuals, but it is the responsibility of the state to exercise due diligence to prevent them.

DECEPTION IN RECRUITMENT

Recruitment agents routinely lie to prospective workers about the wages they will receive, the type of work they will perform, and the hours and other conditions of employment. Some agents promise jobs that they know do not exist. And some may even deceive workers about the country where they will be working.

In a typical account, Srijan, a 28-year-old man who was working on a flower farm in the Cameron Highlands, compared what his agent had told him with what he found when he began work:

I paid 5,000 ringgit [\$1,460] to an agent in Nepal to come to Malaysia. The agent said that when we came here, we wouldn’t have to work during the weekends. But here we work every day. The agent said the salary would be 750 ringgit [\$220] per month. But here they give 600 ringgit or less [\$175]. When we left from Nepal, the agent said that the levy for the permit would be 350 ringgit [\$100] that would be cut from our salary. But here they cut 1,200 ringgit [\$350].

Niaz, a 36-year-old Bangladeshi man, had a similar story. “In Bangladesh, the agent approached me. He said, ‘There is good work in Malaysia. You’ll get 18,000 to 20,000 taka,’” or \$260 to \$290, per month, he said. “When we arrived at the factory, the basic salary was 546 ringgit [\$160], and there was a 34-ringgit [\$10] allowance for rice.” With overtime, he has been able to make 627 ringgit, or \$185, in each of the three months prior to the interview, but even that amount is far less than he was promised.

And Rajkumar, a 26-year-old from Nepal working on a plantation in the Cameron Highlands, reported, “I got information that there was work in Malaysia through an agent. The agent told us that there was good work in agriculture, that for 10 hours [of work per day] we would get

800 ringgit [\$235] a month. When we came, it was 500 ringgit [\$145] per month that we got for 11 hours of work.”

The accounts follow a depressing pattern. Kishore, a 28-year-old Nepali man, was promised 1,000 ringgit (\$290) per month for work as a security guard, but the company paid him only 600 ringgit (\$175) for the month’s work. Zahid’s agent in Dhaka promised him a factory job that would pay 750 ringgit (\$220) per month, but when he arrived in Malaysia, he received only 500 to 600 ringgit (\$145 to \$175) each month. Malik, a 24-year-old man from Indonesia, said that for the roadside construction work he agreed to do, “the agent said that one day will get you 45 ringgit [\$13] plus overtime. But when we came, we found that we were only getting 30 ringgit [\$8.75]. There was some overtime, but not much. On 30 ringgit a day, we can’t survive.” Babar, a middle-aged man from Bangladesh, came to Malaysia on a promise of a daily base salary of 18.50 ringgit but was only paid 15.50 per day. “We have spoken to our agent,” he said. “He said if we were unhappy, we should go back to Bangladesh. So what can we do now? We sold our land; we are out of money.”

“I came to Malaysia in January 2008. I had studied up to the SSC [the Secondary School Certificate examination, conducted at the end of year 10] and was unemployed after that for three years. It was hard finding jobs there, with Bangladesh being a poor country, with too many people applying for too few jobs. An agent came to my village to look for workers. The agent asked for 205,500 taka [\$2,990], which was [then] about 12,500 ringgit. The agent promised me 1,000 ringgit in wages [\$290 per month], with free food and housing. I was told that I would pay for electricity. I agreed and paid the money. I left for Malaysia about four months later.

“I was picked up from the KLIA airport after reaching Malaysia. Fifty-one workers came with, all using the same agent. We were then all taken to Penang Island, to a factory in Bukit Panchor. It was a timber factory, and my job was to lift timber. The agent took away my passport. I worked in the factory for two months and 15 days. I worked eight hours a day and was paid 18.50 ringgit a day [between 450 and 500 ringgit or \$130 to \$145 per month, less than half of what was promised]. My food was not provided as promised, although my accommodation was provided by the employer. I stayed in a room with 15 other workers. After working there for about two and a half months, the company told all of us 51 workers who had arrived together to all leave because there was not enough work. All 51 of us then left.

“The same agent who had brought us to this company then found us a new job elsewhere. I worked there for two months but was not paid wages for the period. They did, however, occasionally give 50 ringgit after repeated requests. We therefore received about 100 to 150 ringgit per month [\$29 to \$44] for the period. The agent then disappeared, telling us that he was handing us over to a different agent.

“At the time, our passports were being held by the agent. When I asked for my passport back, the agent said that I would have to pay 600 ringgit [\$175]. I did not get my passport back at the time. I could finally afford to buy it back in January this year [2009].”

—Shamshad, age 27, interviewed in Kuala Lumpur

Workers frequently reported that the type of work they actually did in Malaysia was different from what their agents had promised. “I expected that I would be working in a glove factory, but when I came here, the boss said that I had come here to work on a vegetable farm,” said a 42-year-old man from Nepal. Mostafa, a 23-year-old Bangladeshi man, reported, “The

agent [in Bangladesh] said the company was good, the salary also good. The agent told me I'll be working in an electronics factory. This was in Bangladesh. When I got here, I was given work in a furniture factory."

Workers brought in under an outsourcing arrangement—one that permits agents to bring in large numbers of workers who are then allocated to different employers as needed—frequently complained that they found themselves unexpectedly idle, and unpaid, for prolonged periods. After Mostafa, the 23-year-old, worked in the furniture factory for four or five months, his agent moved him to a hostel to wait for more work. "He kept me there for three months," Mostafa said. "The agent didn't provide us any food." He and the other workers had their relatives wire money so they could cover their living expenses during the time they were out of work.

Amnesty International delegates heard numerous accounts of workers promised work that did not exist. When Imran arrived from Bangladesh in 2007 at the age of 23, the agent did not pick him up from the airport for four days. After the agent picked him and a group of about 45 other workers from the airport:

We were taken to a gudang [a warehouse], where we stayed for three days. After that, the Bangladeshi agent came and told us that there were no jobs available under the work permit that we had been given, and we were asked to leave the gudang. I was very angry and complained, but the agent did not do anything. The agent then asked me for 500 ringgit [\$145] if I wanted my passport back. I paid because I did not have any choice.

Navin, a 24-year-old from Nepal, had a similar account:

The Nepali agent told me that I would work as a cleaner, but really I never got any work from the agent. Just put me in a room and I waited. . . . We stayed in the flat for three months without any work. The agent never gave us any money for food, so we had to go outside to meet Nepali people and explain what happened, collect money and get food.

And Ashraf told Amnesty International that he and six other workers travelled to Malaysia from Bangladesh after they were given three-year contracts to work with a company at a wage of 30 ringgit (\$8.75) per day:

We all used the same agent. We stayed at the airport for a night. The next day, the employer and an agent came to collect us. Our passports were taken by them. They took us to Seremban to work with another company that had nothing to do with [the first company]. Myself and other workers telephoned [the first company], and they told us that the job I had been promised did not exist. We called numerous times, the first time being from the airport and the most recent being last month [June 2009]. The company said that they knew nothing about us.

Eventually, the seven workers paid the Malaysian agent 1,200 ringgit (\$290) each to reclaim their passports.

A few workers reported that their agents promised them work in other countries, usually in the Middle East, and that they did not discover that they would be travelling to Malaysia to work until they had already paid the recruitment fees. For example, one 42-year-old Indian woman paid her agent 30,000 Indian rupees (\$640) to obtain domestic work in Saudi

Arabia, but she learned shortly before her departure that she would be going to Malaysia instead. "When I asked why Malaysia, the agent said there were no vacancies there [in Saudi Arabia]. I had to come here to be working. The agent said, 'You go, not go, it's your wish.'"

And some agents take money for services that they do not actually deliver. In one case, after a 42-year-old man from Nepal paid an agent to arrange work for him in Abu Dhabi, the agent told him that work could not be arranged but did not return the fee; the man then paid another agent to travel to Malaysia. More frequently, Amnesty International delegates heard of agents who failed to undertake many of the tasks they had promised to complete. A 26-year-old Indian woman told Amnesty International, "I paid 10,000 rupees [\$215] to [the agents] so they would obtain my passport and get the other documentation. But they did not do anything, so I ended up having to do it all on my own. Since they had not done anything, I travelled by myself to Madras to get the documentation and ask for my passport. Madras is 130 km from my residence."

EXORBITANT DEBT

To pay recruitment agents and cover the costs of travel to Malaysia, workers and their families commonly sell land or their homes and take out loans. Some sell family jewellery or gold. The interest rates on loans are in many cases extortionate, and many workers find themselves in situations akin to debt bondage.

In a typical account, a 24-year-old man who came to Malaysia from Myanmar in 2003 reported that he paid his agent 6,000 ringgit (\$1,745) and spent a similar amount on his travel expenses. To raise the funds, he said, "My father sold three acres of land and borrowed from some people at very high interest. The rate was 15 per cent. I received 6,000 ringgit from my father and 6,000 from the loan." It took him four years to pay back the loan.

Workers take out loans at exorbitant rates because they have few other options and because they believe their agents' promises that they will earn high wages in Malaysia. For instance, Rabi, a Nepali worker who arrived in Malaysia in October 2007, took a loan at an annual interest rate of over 40 per cent from a private lender to pay his agent 85,000 Nepali rupees (\$1,130). He expected to be able to pay back the loan within one year, based on his agent's assurance that he would be well paid in Malaysia. "But I have not been able to pay it back. I think I'll end up having to pay back more than 200,000 rupees [\$2,665]. If I can't pay it back, the guarantee the lender will take is my house."

Pramesh, a Nepali plantation worker, expressed similar concerns. "I paid some 5,000 ringgit [\$1,460] to come, took loans from a money lender. The agreement was that I would pay it back in six months." He pays 500 ringgit (\$145) a month and had been doing so for 16 months at the time of the interview. "One year the interest is 1,500 ringgit [\$440] on the 5,000 ringgit loan," he said, an interest rate of 30 per cent. "If I cannot pay, they will take my land in Nepal."

As the 24-year-old from Myanmar did, some workers are able to pay off their loans, despite the high rates of interest charged. For example, Amnesty International heard from a Nepali plantation worker that he repaid a 5,000 ringgit loan, along with 1,000 ringgit in interest (principal of \$1,460 and interest of \$290), in just over one year. And Rajiv, a Nepali man

who works on a plantation, took out a loan of 90,000 Nepali rupees (\$1,240). It took 19 months for him to pay off the loan, and he estimated that with interest he paid a total of 143,000 Nepali rupees, or \$1,905, meaning that he had paid an interest rate of 34 per cent on an annual basis.

Bangladeshi workers, who reported paying agents between 10,000 and 12,500 ringgit (\$2,915 to \$3,645) or more to come to Malaysia, were the worst off. A Bangladeshi shop owner in the Klang Valley, on the outskirts of Kuala Lumpur, observed that high debts and low wages were a particular problem for migrant workers from Bangladesh. "If 4,000 people come, maybe 2,000 of them will lose money," he said. "They pay 10,000 or 11,000 ringgit [\$2,910 to \$3,200] to come here. In Bangladesh, that's big money. They have to take out loans—bank loans, outside loans."

"I paid 230,000 taka [\$3,325] to come to Malaysia. How am I ever going to get back that money?" asked Niaz, who earns 480 ringgit, or \$140, each month as a factory worker. "What can I do with 480 ringgit? If I send money to Bangladesh, what can I do with that [the little amount that remains]?"

Khaleel, a 25-year-old from Bangladesh, paid 12,500 ringgit (\$3,640) to his recruitment agent. He had been in Malaysia for a year and a half at the time of the interview. He estimated that he still owed 11,500 ringgit, or \$3,350, on the loans he took out to pay the agent's fee. "Every month, I am borrowing from the company for food," he told Amnesty International. "I am having tensions now. If I work here for even 32 years, I cannot do anything. It is very difficult to save 100 ringgit [\$29] the way it is now. At least I will need five years to get back all the money that I spent."

"In the two years that I am here, I could only send home 50,000 taka [\$725]. I don't know how many years it will take me to get back the money I spent to come back to Malaysia," said Zahid, a 20-year-old Bangladeshi man, telling Amnesty International that he had spent 220,000 taka, or \$3,190, to arrange employment and travel to Malaysia.

Some workers reported that they worked without pay for an initial period as a means of covering the fees for their recruitment agents. For example, a 38-year-old Indian woman who had come to Malaysia in January 2009 to do domestic work told Amnesty International that she had arranged with her agent to work for five months with no salary in order to cover the recruitment fee of 20,000 Indian rupees, about \$430.

This is the usual arrangement for domestic workers from Indonesia, as Human Rights Watch and other groups have documented.²⁹ An Indonesian woman told Amnesty International that she did not pay her agent in advance of her arrival in Malaysia in March 2009. Her employer told her when she began to work in the house that she would not receive any pay for the first four months, and the agent held her passport. Another Indonesian domestic worker, age 26, worked for six months with no wages; she was told that the first six months of work would be withheld to cover the expenses to the agent and the employer. A 45-year-old Indonesian domestic worker reported that her agent told her that her wages would be withheld for five months to cover the cost of recruitment. And a 22-year-old Cambodian woman reported that her agent paid domestic workers at the end of their contract, and then withheld a substantial

part of their pay. "If you work for three years, she will cut one year and pay for two," the woman said.

Such arrangements are not limited to domestic workers. Kywe, a 36-year-old man from Myanmar, told Amnesty International that after he arrived in Malaysia in late 2008, "I worked in a glass factory for three months, but I received no salary. . . . The boss told me, 'No salary, the agent takes it.'"

Whether they work without pay for extended periods or take on significant debt on the basis of representations that turn out to be untrue, these workers are exploited. As discussed in the Recruitment Agents section above, deductions from wages to pay recruitment fees are in violation of the Protection of Wages Convention.³⁰ And detailed more fully in the Trafficking in Persons section below, exorbitant debt or arrangements where workers must work without pay can amount to debt bondage, in violation of international law.

WAGE MANIPULATION

Many workers reported that their Malaysian agents and employers immediately began to deduct the cost of their work permits from their salaries, usually in monthly instalments known as levies. Nearly all of these workers had already paid for their work permits in their home countries, meaning that they were paying twice for the same permits. To most workers, these extra expenses come as a surprise. For all, the levy charges substantially reduce their take-home pay and increase the amount of time they will need to repay the loans they have taken out in order to come to Malaysia.

In a typical account, Arvind, a farm worker, told Amnesty International that his Malaysian agent "said the Nepali agent had not paid yet, and they are taking that money from our salary now. It was around 2,000 ringgit [\$585] they took from our salary. They cut a little from our salary for three or four months."

"From the first salary, they started cutting 200 ringgit [\$58]," said another Nepali worker, 28. "When we left Nepal, when I paid the agent 5,000 ringgit [\$1,460], they said the work permit would be 350 ringgit [\$100]. But once we were here, everything changed."

Other workers described deductions of similar amounts when they arrived in Malaysia. For instance, an Indonesian construction worker told Amnesty International that the deduction from his salary in the first year was 2,175 ringgit, approximately \$635.

Some workers did not know precisely how much was deducted from their wages. "Yearly, an additional two months' wages are cut from my wages to pay for the levy costs. I don't know how much the levy charges are. I am also not sure what my wages are, as my employer has not disclosed this to me," reported Ramos, a 25-year-old plantation worker from Timor-Leste.

The assessment of levies is an accepted practice for employers who have paid to have their workers' permits renewed, although it results in a substantial deduction from monthly wages. For example, Khaleel told us that he earned 600 to 650 ringgit (\$175 to \$190) per month as a factory worker; from that amount, 200 ringgit (\$58) was deducted to cover the cost of

his work permit renewal. But charging levies during the first year of employment appears to have been without any basis in the majority of cases—most workers have already paid substantial sums of money to their recruitment agents to secure work permits.

After April 2009, a policy change prohibits employers from passing on the cost of levies to workers. However, many continued to do so after this policy change. Some 2,500 migrant workers staged a protest in October 2009 in response to continued deductions from their wages, according to press accounts.³¹

FAILURE TO PROVIDE CONTRACTS

Such wage manipulation is facilitated in part by the fact that many workers do not receive contracts at all; others receive contracts at the airport just before they leave for Malaysia. Those who do receive contracts frequently receive copies only in English, which they may not be able to read.

“I was given the contract just before I left for Malaysia but could not understand it because it was in English and not Vietnamese,” one 21-year-old factory worker reported. A 20-year-old Bangladeshi worker reported, “Just before I was leaving for the airport, they took my signature on my contract. I was given a copy. It was in English. I speak a little bit, but I could not read it.” Another Vietnamese factory worker, 18 years old when he left for Malaysia in 2007, said, “About two hours before I was meant to fly to Malaysia, at the airport, I was shown a contract and asked to sign it. The contract stated that I would get a basic wage of about 468 ringgit [\$135 per month]. I thought that amount was insufficient but felt that I did not have any choice at that point.”

WITHHOLDING OF PASSPORTS AND WORK PERMITS

The vast majority of workers reported that their employers or agents held their passports and other documents. Employers and immigration officials gave various explanations for this practice, including the suggestion that their workers preferred that employers hold the documents to keep them safe, but some forthrightly told Amnesty International that the purpose of holding passports was to ensure that workers did not leave.

Officials with the Ministry of Home Affairs told Amnesty International in July 2009 that the memoranda of understanding between Malaysia and seven labour source countries currently require workers to surrender their passports to their employers. They acknowledged criticism of that policy and said that they would revisit those provisions of the memoranda of understanding to permit workers to carry their own passports. At this writing, Amnesty International is not aware of any policy change.

Amnesty International spoke to a few workers who had government-issued identification cards that they could use to establish their legal status if questioned by police or RELA agents. But most workers did not know that it was possible to get these cards; most commonly, workers showed Amnesty International photocopies of their passports and work permits. Some had nothing at all to show that they had legal authorisation to live and work in the country.

Most workers told Amnesty International that their employers gave the desire to prevent workers from leaving as the reason for their refusal to return passports to workers. "My passport is held by my employer. He used to allow me to hold it when I requested it during my first year of work; however, [he] has refused to give it to me since then because a number of other workers have run away," said Phuc, from Vietnam.

Because employers ordinarily pay to renew their employees' work permits and then recoup that cost through monthly deductions, they may demand money from workers before turning over passports, either in reimbursement for those costs or as a form of security that the workers will stay on the job. "I asked my agent for my passport, but he said that he would only return it if I paid him 1,000 ringgit," or \$290, said Farook, a Bangladeshi man in his forties who sought to switch employers. Abdul Rahman, also from Bangladesh, told us, "I have been told by the agent that I would need to pay a deposit of 1,000 ringgit if I wanted to return to Bangladesh for a holiday. My passport is still being held by my agent."

Amnesty International spoke to one worker whose employer lost the passport he was retaining. Minh, a Vietnamese man, told Amnesty International:

My employer held my passport. In September 2008, he told me that the passport had been lost. When I asked for the passport, he told me that he had already returned it to me and that I was the one who lost it. This was not true, as he had never returned it to me. Since then, I had no documentation to protect me. My employer never lodged a police report about the lost passport, nor did he take me to lodge a report about it. A police report was lodged after I came to seek help from the Office for Human Development. Now, the only document that I have to prevent me from being arrested is this police report.

The change to the memoranda of understanding would be a welcome step. The practice of withholding passports and other documents has serious consequences for workers. First, it makes workers vulnerable to arrest, ill-treatment and extortion by police, as described more fully in Chapter 4, below. Second, it severely restricts their ability to leave situations of abuse or exploitation. Finally, as described more fully in the following section, it means that it is easier for recruitment agents and employers to deceive workers about their immigration status.

THE FAILURE OF EMPLOYERS AND AGENTS TO OBTAIN PROPER WORK AUTHORISATION

Workers may come into Malaysia with legal authorisation in a variety of ways, including by entering on "calling" visas or in some circumstances on tourist visas. The complexity of the system means that workers may inadvertently violate the conditions of their entry or stay and find themselves without legal immigration status. And because employers and agents usually hold the documents and must apply for work permits and renewals, workers often have no way of knowing whether they are legally authorised to work.

One of the most common ways for workers to run afoul of Malaysian immigration laws is to perform work that is different from that which they are authorised to undertake. (For a fuller discussion of these provisions, see Chapter 6, Illegal Entry and Other Immigration Offences section.) Amnesty International heard of numerous instances in which agents brought workers into Malaysia on one type of work permit and then improperly arranged work for them

in a different sector of employment—for instance, bringing workers in on manufacturing permits and placing them in construction work.

Hardiyanti was one such case. She was recruited in 2006, when she was 22, to provide administrative support to a recruitment agency in Jakarta that placed domestic workers in Hong Kong, Malaysia, and Singapore. After three months of training in Indonesia, her employer brought her to Malaysia. “I did filing and computer work, as I had done in Indonesia. The nature of the job was inputting all the data. Each time a new domestic worker would come, I would do the register. I would do the FOMEMA [health] test. If there was an issue with the employer, I would refer the worker—I would go to the embassy with the worker if anything came up.” In addition to these office duties, she cleaned and did laundry for her employer, often beginning her day before 6am and finishing after midnight.

Her employer had brought her to Malaysia on a domestic worker visa, and she initially assumed that her employer had obtained the correct permit for her. In late 2007, however, “I learned that the immigration enforcement had raided the place where I worked. They suspected that my employer was operating without a licence.” Her employer began to have her work from his house. “This is where I started having feelings of doubt about whether the work I was doing would jeopardise my position legally.” She was not sure what she could do. “I continued doing what I was doing. I wanted to go to the Indonesian embassy, but I was scared to ask the embassy whether what my employer was doing was legal or illegal.”

“After around three or four months in the house, I moved back to the office,” she continued. Soon after, a domestic worker placed by the agency ran away from her employer. “The police came looking for the domestic worker at my employer’s house. . . . They took the employer down to the police station. The reason was that the domestic worker had no work permit. She had been in Malaysia six months with no work permit yet. Because of this incident, I really started to be fearful. The police raided my employer’s house twice more, once during the day and once at night. At the office, I would get calls from immigration enforcement, asking me questions about my employer that I really couldn’t answer.” Her employer started asking her to handle all the files, and she became afraid that if there were any problems with any of the workers, she would be implicated. In August 2008, when she was at the Indonesian embassy to renew passports for three of the workers placed by the agency, she asked about her own situation. She went directly from the embassy to a shelter for domestic workers. (This case is unusual among those examined by Amnesty International for the degree to which Malaysian authorities investigated a recruitment agent’s practices.)

Employers who fail to obtain proper work authorisation for their workers are likely to engage in other abuses, particularly withholding of wages. In one case, a manufacturer recruited 51 Bangladeshi workers, who began work in July 2008. They reported that they routinely worked from eight to ten hours per day. Their payslips indicated the salary they were owed under their contract, but they actually received less than 50 ringgit per month. More than half the workers had no work permits; because the employer kept their passports, they did not realise that they were working without authorisation until they tried to file a labour complaint in April 2009.

In another case, 53 Bangladeshi workers were brought to Malaysia as factory workers in 2007. Their employer never applied for work permits for them. They worked for one month

without pay before their employer dismissed them. The employer introduced them to a Malaysian agent, who asked 1,800 ringgit (\$525) from each worker to process outsourcing permits for them, which all 53 workers paid. The agent then introduced them to a second agent, who asked the workers for an additional 580 ringgit (\$170) each for the medical examination and work permit renewal. Thirty-four of the workers paid this additional sum. None received work permits. In March 2009, the workers obtained special passes that authorised them to leave the country within 14 days. (A special pass authorises the holder to remain in Malaysia for a limited period of time, usually a month or less. Without these passes, the workers in this case would be subject to fines, imprisonment and caning for remaining in Malaysia without valid permits. Immigration crimes and their penalties are described more fully in Chapter 6.)

Those who are brought in on outsourcing arrangements are particularly vulnerable to becoming undocumented as the result of their agents' acts or omissions. For instance, a 24-year-old Nepali man told Amnesty International that he had come to Malaysia in 2004 on a visa that allowed him to work as a cleaner. When he arrived, he discovered that there was no work for him. He waited for work for three months before he was employed in a saw mill. He then worked for a construction company for more than a year. "The agent never renewed the visa," he said. "We called the agent, wanted the passports renewed. We waited two or three months. They were taking levy payments of 150 [ringgit, \$44] a month but never renewed. We thought the agent had done it, but when the company checked, they found out it was never renewed. Six months [later], never renewed. We told the company boss, and he said for us to just work there and if we have any problems, he'll settle. Six months we worked for this company again, but after another six months the company said that we could not work there any more without a visa. We called the agent, and the agent said that he cannot help us with anything because we are not working for him anymore. He said we could do what we want, but he wouldn't help us."

Amnesty International heard similar accounts from other outsourced workers. "I came here in October 2007, and at first I had a permit for one year," said Rabi, a 36-year-old man from Nepal. "I was brought in under a three-year contract. After that, the employer failed to renew the permit. I continued to work for him, and he continued to deduct the levy, but he did not renew [the permit]."

Workers often enter Malaysia on a temporary basis by showing a "calling letter." In such cases, their employers or agents must then apply for their work permits once they are in Malaysia. However, Amnesty International heard of instances in which agents and employers failed to do so. One Indonesian woman who worked at an electronics factory reported:

From August 2008 until July 2009, I had not been given a work permit despite 100 ringgit [\$29] being deducted from my wages every month since reaching Malaysia. Since my arrival, I had asked the company for my work permit constantly. They said it had not been completed yet. I did not have my passport because the outsourcing agent had kept it. It was not returned to me despite me asking for it numerous times. It has been very frightening, as I worried what would happen if I were arrested. I do not go out as a result of this.

Amnesty International's examination of her documents confirmed that her employer had not obtained a work permit for her until July 2009, meaning that she was working without

authorisation for the previous 11 months and was charged during that time for the cost of a permit she never had.

Finally, Amnesty International heard of instances in which agents obtained documents for workers that contained significant errors—not, it seemed, out of intent to commit fraud but instead through carelessness. For instance, Sanjit has worked for the same vegetable farm in the Cameron Highlands since he came to Malaysia in 2007. “My work permit is under this company; however, I am worried because the photos on my ID card and work permit are not mine. . . . I fear what will happen if I am caught. This is a big problem for me, and I have raised it with my employer and agent but nothing has been done yet.”

These concerns are real. As discussed below, police and immigration agents—including members of the volunteer RELA corps—routinely stop and question those suspected of immigration violations. Indah described one case in which the agent's misconduct led to the detention of another worker:

One of our co-workers was detained in December 2008. She had been arrested while on a visit to Klang town. The police had informed our outsourcing agent about the arrest and asked for her passport, but the agent failed to submit it. I had approached the outsourcing agent many times to ask them to help get her released. They were like animals and ordered that I should only work and not be involved in any other matters. She was therefore jailed at the Kajang prison. After being released from Kajang into a detention camp, I called Migrant Care [a local NGO], who got in touch with the Indonesian embassy, who in turn helped secure her release from the detention camp. The embassy had forced the agent to release her passport. Only then did the agent do so. The worker did not have a valid work permit at the time of her arrest. The work permit was only issued after she had been released from prison. Such instances have happened to so many other workers in our company.

An employer's or agent's failure to renew permits also prevents workers from leaving the country without risking arrest, prosecution, substantial fines, and the possibility of being caned. Ramesan was in that situation when Amnesty International spoke with him in July 2009. He came to Malaysia from India in 2005, expecting to have a job as an electrical maintenance technician that made between 1,000 and 1,200 ringgit, \$290 to \$350, per month. Instead, he spent seven months waiting for his agent to find him work. His agent did not renew his permit. He would like to return to India, but he cannot leave the country unless he has regular immigration status.

Employers may be penalised for employing persons who do not have valid work permits, but in practice few are charged. Between 2007 and 2009, 269 employers were charged with immigration offences, according to news reports.³² The Immigration Department was not able to tell Amnesty International how many employers were convicted of immigration offences.

POLICE REPORT, APRIL 2009

“Made on behalf of 38 workers and self.

“About 99 workers and myself of Bangladeshi nationality came to [Malaysia] to work as cleaning workers; approval was given dated 25 May 2007 to [employer’s name redacted].

“Entered into an Employment Contract on 28 May 2007 with [employer]. According to our contract basic salary is RM 23.00 [\$6.70 per day] and overtime subject to Malaysia Labour Law. Our working hours are 8 hours per day (Mond – Sat) and there will be at least 7 days annual leave on completion for the 1st year . . .

“Upon request by [employer], we arrived in Malaysia on 13 August 2007 and we have undergone the medical tests by Fomema on 29 August 2007. After medical check-up our employer Mr R had processed valid passports and work permits for all of us. We were give a photocopy of our passports. Our passports are held by the employer and no ‘jalan kad’ [immigration card] is given to us as required by Immigration. After all necessary process were done, we were allocated to different places to work as cleaner, either in Hospital or School in accordance with the employer’s arrangement.

“Work permits expired on 13 August 2008. However levy had been deducted continuously from salary since Sept. 2008 until December 2008 (4 months). Despite our work permits expired on August 2008, some of us were being transferred to Sungai Buloh to continue our services. We worked for 12 hours per day, 7 days per week without any off day/rest day and overtime payment as stated in the Employment contract. Any off day that we have taken will be considered as unpaid leave or absence. We were only given RM 27 per day [\$7.90] including overtime for all the work that we have done.

“Some of us had worked without leave for the whole month in January, but were not paid for the OT. Our employer has breached the Employment Contract. Our employer did not renew our work permits despite several requests. Moreover, he threatened us that he will call the police to arrest us if we keep on asking them to renew our work permits in the future. Despite our employer’s refusal to renew our work permits, we still work for them until now. Since the expiry of our work permits 3 of my friends have been arrested by the police due to the expiration of the work permits.”

RECRUITMENT OF UNDERAGE WORKERS

Amnesty International interviewed six workers who came to Malaysia when they were under age 18. Three, from Myanmar, had come through Thailand with no documentation at all. But the others had come with the assistance of recruitment agents, who arranged false documents. In one such case, Mawar came to Malaysia from Java in 2005 at the age of 15. She said the practice of recruiting underage workers was common at the agency. “If the girl is an underage girl, the agency will increase her age. In my passport, I can’t remember exactly what they said, but I remember it said that I was born in 1983,” giving her age as 22 in 2005, she said.

Many adult workers also told Amnesty International that their passports did not show their true ages. The agreements between Malaysia and source countries often set a minimum age

of 25 for migrant workers, but many workers said that they came to Malaysia when they were between 18 and 21.

In a 2004 investigation of abuses against domestic workers from Indonesia, Human Rights Watch found that the practice of altering passports and other travel documents was widespread.³³ Amnesty International did not find evidence that the government has acted to protect workers from this practice.

Children under age 18 who work as domestic workers and in other hazardous forms of work are more vulnerable than adults to exploitation, violence and other abuses, and injuries on the job.³⁴ Hazardous or exploitative work by children under age 18 violates international law.³⁵

FORCED LABOUR

In some instances, workers are compelled to work against their will—by being confined to the premises, through threats of violence, or by other means that conveys to them that they have no choice in the matter.

Three women from Myanmar recounted, in separate interviews, a classic case of forced labour. They had been recruited to work at a garment factory. They said, “The agent came to our house and said there were vacancies in Malaysia. So he contacted the employer, and the employer came and interviewed me and my family,” Khine told Amnesty International. “He explained that we’d be doing sewing machine work, working from 8am to 8pm, and would get 750 ringgit [\$220] a month.” The agent and the employer told the other women the same terms. “My parents also thought it was okay since the employer came himself to interview us, and came to the house,” said Win.

The three women flew to Kuala Lumpur in January 2009, part of a group of seven or eight women who had agreed to work for the same employer. Their employer did not meet them at the airport that day, so they spent the night in the airport holding area. “The KLIA holding centre is in a car park, divided one side men and females on the other. In one room you have all nations, lots of others beyond Myanmar. Way too many people,” Soe told us.

Their employer picked them up from the airport the following day. “The wife wanted us to start work right away, but we explained that we had just arrived and didn’t have anything to eat. So we wanted a rest. The wife was unsatisfied. The employer let us sleep and said we could start work the next day,” Khine recalled.

They began work the next day and worked for twelve hours. At 8:30pm, the employer told the women to continue working. “But we were already told by the first group that the employer doesn’t pay for overtime, so we refused,” Soe said. “We refused and said that our work was only from 8:30am to 8:30pm, and the problems started,” Win related. The employer shouted at them that he was dissatisfied with their work. “The employer asked us to finish 700 pieces of sports shirts, but we couldn’t do 700 in 12 hours. I could only do just over 300 in 12 hours, and the other girls were about the same,” she said.

The women asked for higher wages if they were expected to work overtime. "We told the boss that after 8:30 we cannot get that amount [750 ringgit per month]. We asked for extra money for working extra hours; otherwise, we wouldn't go on. The boss said, if that is so, then for the 12 hours he could only pay us 550 [\$160] a month. We replied that we'd been promised 750 ringgit a month and not 550. Then everybody left at the end of the day," said Win.

Their second day on the job, the employer told them they would have to work through the night to fill an order. "We could not refuse anymore; no one could go back to the hostel," said Khine. We must go to work. If we cannot work, they said they will send us back." They worked until morning.

In the afternoon of their third day at work, "the employer called some gangsters up to the workplace," Soe recounted. The employer told the women that the men who had arrived at the factory were police, Win said. "They went around the factory searching for phones, and took all the phones off us. The gangsters sat and monitored us; they searched us whether we had a phone. I was afraid while they were there. I think we were meant to be frightened."

Khine described the men's behaviour in more detail:

[A]round 5pm the gangsters came and searched everyone for their cell phones. The gangsters were also holding sticks. They were shouting and making noise, kicking things over. All the time I was frightened, very afraid. They told us to turn off all machines, and we turned them off. They would search every person for a phone, and if they didn't find one they would get more angry. They found three phones from the first group.

After they got the telephones, they stood there and watched us, in front of our machines, as we worked. We did not dare talk; if we [did], the gangsters shouted at us. Around 6pm, they went back. But still some were watching downstairs, so we were afraid to leave.

Soe added:

The employer and his wife were there laughing at us. They took one of the girls away, and her sister tried to follow. One of the other girls had managed to keep her phone and tried to make a phone call. Another gangster heard her on the phone and went to beat her, but the employer prohibited the beating.

After about 30 minutes, they came back with the girl, and the guys started to leave. They left around 5 or 6pm, and we continued to work. I think there were around six of them, but I'm not sure, since there were some downstairs as well.

I was afraid after that; I had to continue working.

They again worked overnight. "That night, we didn't have any breaks," Win reported. "We were working the whole night, to finish the whole order, but then we were fired." Khine said, "We were supposed to work the whole night without having eaten anything. The employer didn't feed us or give us breaks. At about 5am the next morning we finished working. The employer told us to prepare our things, since we were being sent out [fired]. He said to us, 'You go out, wherever you want to go, but go out since you cannot work.' Then he told us to go back to the agent."

Abdul Rahman, a Bangladeshi worker in the Cameron Highlands, described the tactics his agent used to compel a group to work:

In 2007, we were promised high paying jobs in a Sony factory in Malaysia but when we arrived in Malaysia we instead taken to a farm in Cameron Highlands where the pay was much less. We complained to the agent and the farmer who had employed us. The farmer also called the Malaysian agent, who then came to collect us the following day. We were taken by car to a remote area, about two hours away and dropped off. It was a jungle area. The agent then drove off. We did not know what to do as there was no accommodation, food or other amenities there. We also had no documents as the agent had kept our passports.

After about six nights, the agent returned. The agent then told us that we had to work at the farm and that we did not have a choice. We were told that if any of us chose to return to Bangladesh, we would have to pay for our flight ticket. As we did not have any money, we were told that we would have to work until we earned enough to pay for the flight back. One of my colleagues chose to do so and worked for two months. After the two months, the agent collected him, and I was told that he was sent back to Bangladesh. I could not return and chose to stay because of the amount of money that I had borrowed back home which I would not have been able to pay back had I returned.

Amnesty International heard second-hand accounts of other workers who were effectively confined to the workplace. "I want to tell you about the 40 workers on the neighbouring farm," an Indonesian worker said to an Amnesty International delegate at the end of his interview. "It is a big farm with workers from Bangladesh, India and Pakistan. They are having some bad problems because their employer treats them badly. They are given very heavy work and are only paid 15 ringgit [\$4.35] a day. All of them have work permits. They weed, plant, farm the vegetables and lift heavy bags of fertilizer." When the Amnesty International delegate asked whether he could meet the workers on this farm, the man replied, "No, because their employer keeps a close watch over them, and they are not allowed to leave the farm. They will get into trouble if they try to leave."

As in Abdul Rahman's case, some employers compel workers to remain through their contractual period or for additional periods of time by threatening to withhold wages or imposing invented fines.

For instance, Phuc decided to return to Vietnam in October 2009, when he would have finished two years at the factory where he worked. He reported:

When I informed my employer that I wished to go back, they refused to let me do so and have threatened that I will have to pay fines amounting to 500 ringgit [\$145] and then also pay for my return air ticket. The air ticket will come to about 700 ringgit [\$205]. I told my employer that I would pay for the plane ticket but not the fine. My contract does not say anything about having to pay a fine. When I told him this, my employer got very angry and said that he would not pay me my wages then. Since the company has refused, I feel that I will be forced to continue working there for another year.

Amnesty International heard similar accounts from other workers. Aini, a 30-year-old Indonesian woman, had been working at an electronics manufacturing company for nearly one year at the time of her interview in July 2009. She said:

I have been telling the agent that I wish to return to Indonesia to stay there. They told me that I would then have to pay a fine of 500 ringgit [\$145] and purchase my own airline ticket. I simply cannot afford to do this. . . . In addition to this, I was also told that upon returning to Indonesia, I would have to pay the Indonesian agent 1,600 ringgit [\$470]. This is because the agent there has not taken his share of the fees yet.

Despite these penalties, the woman decided to return to Indonesia the following month:

I have already paid the 500 ringgit fine to my agent and bought an airline ticket for 250 ringgit [\$73] with my own money. This has been a very hard period, and I have not made any money. I have in fact made a loss and have to pay back the money due to the Indonesian agent, 1,600 ringgit, because my wage here was simply too low to pay him. The agent had promised me a good job if I came to Malaysia, but that was all untrue. I now do not have any choice but to return.

Other workers reported that their employers automatically renewed their work permits; many did not know that they had the right to refuse continued employment. For instance, Srijan, a 28-year-old Nepali farmworker, said, "I want to go back when my work permit is finished, but the employer keeps renewing it."

OTHER LABOUR EXPLOITATION

Many migrant workers in Malaysia toil in conditions that amount to labour exploitation. Their pay may be late or subject to numerous deductions; some workers are not paid at all for months of work. Most work long hours with no paid overtime and sometimes no breaks; many work every day of the week. Verbal and physical abuse is common. Women may be subjected to sexual harassment and assault, including rape.

Employers are required to maintain a safe working environment and must carry insurance that covers workplace injuries. (These requirements do not apply to the employment of domestic workers, however.) Even so, many migrant workers operate hazardous equipment or handle dangerous chemicals, often without protective gear or a clear understanding of how to protect themselves. When they suffer accidents at work, their employers may refuse to pay for their care and in some instances pressure them to return to their home countries.

Many also live in substandard conditions in housing provided for them by their employer. Malaysian law requires that such housing be in good repair and meet other minimum standards.

The head of a refugee community organisation described working conditions at one factory:

"I was recently at a steel factory in Penang where the work conditions were particularly bad. . . . The wages are 15 ringgit [\$4.35] a day, and workers are not paid any wages for the first three months. Therefore, if they stopped working within the first three months, they would not get any wages. This did happen quite often when people left because of the bad conditions.

"There are usually 15 people working in the factory. The workers were not allowed to leave the factory at all, not even to buy provisions. The area where the workers worked was blocked off with zinc sheets. The employer and his relatives are always present and prevent the workers from leaving. They also use guard dogs to prevent people from entering the vicinity. The factory owner's relative would come to the factory to sell things, including vegetables, but all at higher prices than available outside. The workers did not have any option but to buy these things."

NON-PAYMENT OF WAGES AND MULTIPLE DEDUCTIONS

Workers' most frequent complaint, and clearly the subject of the most widespread concern, was that they were not paid all that they were due or were paid late. In many cases, non-payment of wages meant that workers have to borrow money to pay for food and cover other living expenses. Late or non-payment of wages also means delays in repaying loans. In every case, it caused workers hardship.

In addition, many workers reported that their employers take deductions from pay for not meeting work quotas, for mistakes or for tardiness. Employers also deduct monthly levies, as described above in the Wage Manipulation section, and in some cases make additional deductions for food or rent. The cumulative effect of these deductions is such that some workers take home little or no money each month. Some workers end up owing their employers money after all deductions are accounted for.

Ghulam worked with a construction company when he arrived in Malaysia in September 2007. He was employed under an outsourcing arrangement, so his agent was responsible for paying his wages. When the agent didn't pay him at the end of the first month, he borrowed 50 ringgit (\$15) from the construction company so that he could afford something to eat. The agent had still not paid him at the end of the third month, and he borrowed another 100 ringgit (\$29) from the company. The agent then told him that he would receive a lump sum at the end of six months.

He received no pay after the six months passed, and neither did anybody else in the company. The workers stopped working in protest, and he sought help from Tenaganita, a nongovernmental organisation that works with migrant workers in Malaysia. He believed that the company was actually paying the agent, and he had no complaints about the company's treatment of him or the other workers. Forty-eight workers filed a complaint with the Bangi Labour Department. The department found in favour of the workers in July 2008 and ordered the agent to pay them a total of 277,348.50 ringgit (\$80,860), between 4,800 and 7,500 ringgit (\$1,400 to \$2,190) per person, in back wages.

After the decision, the agent offered to settle the case for 30,000 ringgit (\$8,745), but the workers rejected that proposal. One year after the Labour Department's decision, they had not seen any of the back pay they were owed; Malaysian authorities had made no effort to enforce the ruling.

A Vietnamese worker at an aluminium casting factory told Amnesty International, "Wages were usually paid late, usually one month later. When we were completely out of money for food, we would go to the factory to ask for money. They would then give us a little money which they would then deduct from our wages." One of his co-workers produced payslips that showed that two months' wages were paid in six instalments, with the final statement in the series showing that the worker owed the company 45 ringgit (\$13).

Indah, 30, came to Malaysia in December 2007 as part of a group of nearly 50 Indonesian workers. She described the efforts they had to make in order to be paid:

Upon arriving in Malaysia, none of the 48 workers in my group received any wages for about two months despite working. We had asked for our wages repeatedly and were told that we would be paid . . . I then organised the workers to stop working until our wages had been paid. . . . The very night before the strike, we were all paid our wages. A female representative from my outsourcing agent's company came to see me and another four co-workers. She was very angry and threatened to send all five of us back to Indonesia. I told her that I was happy with that and asked for my passport back. I told her that I did not like her country anyway. She said that she would return my passport, but they still have not done so.

In addition to receiving their back wages, Indah said that another result of the threatened strike was that the workers began to get overtime. "Currently, we get overtime payments for anything above 48 hours. Before the threat of strike I mentioned earlier, they used to make us work overtime but not pay us for it."

Amnesty International heard frequently of employers who stopped paying their workers altogether.

Many domestic workers told us that an employer had simply not paid her for one or more months of work. A 42-year-old Indian woman said of her employers, "These people were supposed to pay me 500 ringgit [\$145] monthly, but they didn't." She left after two and a half months.

Refugees, who are considered undocumented migrants under Malaysian law, are also often subjected to this form of exploitation. When Zaw fled Myanmar in 2003, he found work in an auto repair shop. "Sometimes I received 20 ringgit [\$5.80] per day, but sometimes they didn't pay." Thaug arrived in Malaysia in 2007 after he fled Myanmar. He met up with an agent who took him to find work in construction. After one month of backbreaking work, he was not paid. And Sein, a 31-year-old woman from Myanmar, worked in a restaurant after she came to Malaysia from Karen state. After three months, her employer had not paid her; he owed her 2,100 ringgit (\$610). "The boss promised, 'After I come back from China, I will give you your salary.' But once he came back from China, he didn't give it to me. We called him to get the salary, but he hung up on us." She took another restaurant job and was paid

for two months out of the three she worked there; six months later, her second employer still owed her 650 ringgit.

Undocumented workers often make less than those at the same workplace who have work permits. An Indonesian worker at a factory where most employees made between 144 and 300 ringgit (\$42 to \$87) per week told us, “Undocumented workers . . . get paid much lower wages than documented ones. They get about 120 ringgit [\$35] a week, and sometimes the wages are lower. We do not get any explanation as to why the wages are lower.” A 24-year-old man from Myanmar who was working in the Cameron Highlands told us that one of his co-workers is receiving only 14 ringgit (\$4.10) per day rather than the base pay of 18 ringgit (\$5.25). He explained that the co-worker did not have a valid work permit, “so the employer has power to reduce his pay.”

Some undocumented workers were charged additional amounts that their employers told them were to cover police bribes. “About 50 ringgit [\$15] a month is deducted from my wage. My employer says the money is to pay police bribes,” reported a 29-year-old man from Myanmar who worked in a factory that made parts for buses. The Indonesian factory worker reported, “Those workers without work permits also have 30 ringgit [\$8.75] each month deducted from their wages because our employer said that he needs to bribe the police not to disturb us.” A 32-year-old man from Myanmar gave a similar account, saying, “My employer tells us he has to pay the police bribes to keep away and that if the payments are not made, then the police would harass us. He says that he deducts some of our wages for these bribes and uses this to explain why our wages are so low.”

Many workers told Amnesty International that they were not paid for overtime that they did. For example, Sanjit, a 21-year-old Nepali worker on a vegetable farm in the Cameron Highlands, told us that his supervisor ensures that workers stay on the job for 11 hours even though they are only paid for 10 hours a day. “I have never asked for my extra wages because I am afraid to do so,” he said.

Many are also denied holidays and other paid leave. “My contract says that I am entitled to 10 days of paid leave, but I am not allowed to take any such leave. When any of us ask for our leave, we have our wages deducted for not turning up,” a 20-year-old Vietnamese factory worker reported. “Locals get holidays, but Indonesians are different,” said an Indonesian woman who worked at factory in Kuala Lumpur. “No increased pay for working during holidays, either.”

In addition, some workers reported that they were paid less than Malaysian workers. The Indonesian factory worker continued, “Locals get much higher pay, about 1,000 ringgit [\$290] or more. With overtime, we get around 850 ringgit [\$250 per month]. Locals work the same hours.”

Workers who do not fulfil quotas or who make mistakes may have additional amounts taken from their salaries. Chau, one of a group of Vietnamese women working for a manufacturing plant, told Amnesty International, “If we make a mistake, the boss just deducts from salary. . . . They deduct five ringgit every time we forget to write number on the [product]. When we weigh product and it’s wrong, [they] deduct 60 ringgit,” or \$18. In addition to these penalties, the women also pay for their makeshift housing, in a collection of containers

on the plant grounds, and for their uniforms. "Every person pays about 20 ringgit for accommodation, five ringgit for cleaning and gas. We pay for uniforms 16 ringgit. Paper mask is given [to us]. We have to pay for the hat, five ringgit," she said.

In addition, when employers return workers to their agents because of dissatisfactory work, some agents assess penalties against the workers. In an extreme case, Mawar worked for over three years without wages after her first employer sent her back to her agent. "I never received any single cent in pay. I was asked to pay 5,000 ringgit [\$1,460] when I was returned to the agent by the first employers. At the time, the employers had already paid the agent 5,000 ringgit. The agent told me I hadn't completed my contract, so she would be deducting that amount. So that's why I didn't get any pay," she told Amnesty International.

If workers leave their employers before the year is up, they are usually responsible for the balance of the work permit cost. "My first work permit cost 1,200 ringgit [\$350]," said Zahid, a 20-year-old man from Bangladesh. "I worked for seven months, and they deducted 100 ringgit [\$29] every month. When I left that employer, I paid 500 ringgit [\$145] in cash, so I paid 1,200 in total."

In addition to the levy charges, some employers deduct for rent or food. For instance, one group of workers in the Cameron Highlands reported that their employer deducted 130 ringgit (\$38) per month for food. Other plantation workers told us that they had amounts deducted from their salary for food, but they did not always know how much those deductions were. A Bangladeshi construction worker in the Klang port area told us, "Now we make 26 ringgit [\$7.60] per day. That works out to about 650 ringgit [\$190] per month, minus 100 ringgit [\$29] for rent and 200 ringgit [\$58] for deduction" to cover the cost of his work permit.

The accumulated deductions can mean that workers take home little or nothing at the end of the month. Mega, a 25-year-old Indonesian woman who worked on the floor of an electronics assembly plant, described her situation:

For the first ten months of work in Malaysia, 200 ringgit [\$58] per month was deducted from my wages. In addition to this, they also deducted 100 ringgit for my levy charges. I therefore earned about 200 ringgit [\$58] per month during this period of the first ten months. I was therefore unable to send any money back to my family in Indonesia since my monthly food and general expenses came to 200 to 300 ringgit [\$58 to \$87].

In fact, after deductions, workers' wages are not always enough to meet living expenses. "We have to borrow money from the subcontractor for food," the Bangladeshi construction worker told us. Khaleel was in similar straits. "Every month, I am borrowing from the company for food," he said.

In some cases, workers did not know how much they were being paid or what amounts were being deducted from their wages. For example, Ramos, a 25-year-old plantation worker from Timor-Leste, told Amnesty International that his employer had never told him what his regular wages were.

UNREASONABLE WORKING HOURS AND CONDITIONS

Those whom Amnesty International interviewed typically work long hours with few breaks, performing backbreaking labour or remaining on their feet the entire time, beginning very early in the morning or working until very late at night. Often, they must work every day of the week.

“The work conditions at the factory are hard,” said a 30-year-old Indonesian woman who worked at an electronics assembly plant. She explained:

I must stand for between eight to 12 hours a day when working. This can sometimes go up to about 16 hours. It gets very tiring. Since we work in a line, we are not allowed to take toilet breaks. We do get short breaks to rest three times a day, which are the only opportunities to use the toilet. . . . I remember how one of the line leaders was badly scolded once for using the toilet outside of the break time.

Domestic workers are frequently expected to work 12-hour days or longer. (As described in Chapter 5, Laws and Policies Governing the Employment of Migrant Workers section, there is no limit on the number of hours domestic workers may be asked to work each day.) For instance, Kristina, a domestic worker from Indonesia, described her workday: “I woke up at 5am, and then I had to prepare breakfast for the two grandchildren. I am not sure of their ages, but both were already going to school. One might be around 11 and the other, seven.” She would do laundry, and then the employer would wake up at about 9am and she would prepare breakfast for her. Her duties included caring for the employer’s elderly mother. She worked every day until about 11pm or midnight.

Lakshmi, a 42-year-old from India, described a similar work day. “At 5am I get up. Then I do all the work. The whole day I have something to do. At night, sometimes midnight or 1am, the employer came home and I would go to sleep. I went to sleep very late.” Her duties included caring for two young children. “I had no rest periods at the house. No days off. I didn’t leave the house.”

In addition, some domestic workers are expected to work in their employer’s business during the day and then do the household work in the evenings. In one such case, a Cambodian woman reported that she worked in the house beginning at 5:30am, went to her employer’s office and worked there until 5:30pm, cleaned the office, and returned to the house to work until midnight.

The only exception was that domestic workers from the Philippines receive one day off per week, at the insistence of the Philippine government.³⁶

Workers frequently complained that they were not allowed time off on the days they would normally attend religious services. One Indonesian man in Kajang told us:

On Easter day this year, I wanted to attend prayers in church after work. My employer did not want to allow me to go because he told me to work overtime. I asked him for permission to go, but he got angry and slapped me. After I fell down, he then took a stick and started to hit me. My brother shouted at him and stopped the attack. My brother saved me from serious harm that day.

PHYSICAL AND VERBAL ABUSE

Amnesty International heard many reports that employers subject their workers to verbal or physical abuse. In particular, many women reported that they endure such abuse on a regular basis.

For instance, women who worked in restaurants said that they were verbally abused, hit, and in several cases sexually assaulted. One woman, a refugee from Myanmar who had been registered with UNHCR, quit her job after a customer grabbed her and pressed himself against her, trying to force himself on her. She was never paid for her work, but she felt that she couldn't complain because of her lack of legal status. Malaysia does not recognise refugees or accord them special protection under the law, as described more fully in Chapter 6.

Some workers reported that their employers subjected them to humiliation. "[M]y employer was very strict and used to be abusive," a 21-year-old Vietnamese factory worker said. He explained:

For example, when he thought that something was wrong or that a worker made a mistake, he would make the worker wear a dustbin on his head and parade around the factory. He also made workers wear a big board on their body and walk around the factory to embarrass them. This never happened to me; however, I have been kicked a number of times and have also had my ears flicked as punishment.

Some employers respond to complaints or protests about work conditions with violence. Babar described one such incident, which took place in June 2007. "Two men came forward to complain, and they were seriously beaten and then sent back to Bangladesh," he said. He continued:

Those two were our spokespeople, that's why the manager beat those two. I saw the two go speak to the manager. I saw him beat them. First of all, they were slapped. Then all the workers were frightened. So then they were kicked and punched. The manager of the company did this. He hit them on their chest and their face. They fell down. Then he started kicking them. He did this so many times I can't count. I was about ten or twelve feet away when this happened. About 80 or 90 workers were there.

Asked why the other workers did not stop the manager, he replied, "This was at the beginning, after we had been there only two months. We were so afraid of the manager. It was only the second month when this happened."

Agents also physically abused workers, particularly those who leave their employers or are dismissed after short periods of time. For example, one 45-year-old Indonesian woman reported that when her third employer dismissed her after one week, "The agent scolded me, slapped me so hard that I fell and fainted. I was so scared that I urinated on the floor. I didn't want to get up so he couldn't beat me again. After that, the agent told me to clean up my own mess and left. He locked me in the office from the outside.

“The next day, my eye was swollen, and even now my eyesight is not as good as it used to be. After three days, the agent came back and asked me whether I wanted to stay locked up or wanted to work. He scolded me for being choosy. I told him I wasn’t being choosy, but I wanted to do housework and child minding, not something else.”

Domestic workers are especially at risk of abuse of all kinds, including sexual assault, because they work in their employers’ homes and are often isolated from potential sources of support.

“If I don’t do the work properly according to the instructions, they will knock me on the head,” reported Lakshmi, a 42-year-old Indian woman. Domestic workers reported that punishments included slapping, pulling hair, making the domestic worker squat for long periods of time, making the worker stand in other awkward positions, stepping on prayer mats and denying the worker permission to pray.

“If I make any mistakes, I get beaten. I’ve been kicked before from one floor to the next floor,” a 26-year-old Indonesian domestic worker reported. One time, she said, the husband in the house where she worked attacked her with a hot iron. She continued:

He was in the bedroom, and I was ironing the clothes. The phone rang, and I rushed to pick up the phone. I had already picked up the phone, and I hadn’t managed to say anything more than ‘okay.’ The male employer opened the door and scolded me, asking, ‘Why did you let the phone ring, and why didn’t you pick it up?’ I said, ‘I already picked it up, sir.’ I had already switched off the iron. He told me to turn on the iron. I didn’t know why he told me to turn on the iron. He shouted, ‘Is that iron hot!?’ And then tried to iron me. Push the iron toward my body.”

When she managed to avoid the iron, he dropped it and hit her with a suitcase.

Once, when the wife and children were sleeping, the husband called her. “He said, ‘Can you come and bring two cups and sit here and spend some time with me.’ I thought I’d be hit if I didn’t comply. Then he poured me whisky and put something in it. I didn’t want to [drink it], and after, I vomited and went into my room. Then the employer went into my room and took my clothes off and raped me.” He raped her a second time when his wife went to Singapore. “After he dropped his wife off at the station . . . he just came into my room. I tried to struggle, but I couldn’t.”

She reported the rapes to the police two days after the second time, and her employer was arrested and then released on bail. One year after his arrest, there had been no trial, and she decided to withdraw the case. “I wanted to go home to my family,” she explained.

Shanti reported that her employer demanded sex from her one month after she began work. She described what happened:

I refused. [Her employer] said, “I also paid for these favours together with the other work.” Then he physically abused me and also threatened to kill me. . . . He pushed me down, and he kicked me in the stomach and on the back. He slapped me and pulled my hair. He

threatened to kill me. He said, "I will kill you and bury you in my jasmine farm. I will tell everyone you have left the house and run away."

She escaped from the house with the help of a neighbour and sought assistance at a nearby temple.

Magesh, a 40-year-old woman, came from India to take up employment as a domestic worker. Her employers beat her five or six times, she said, and choked her one time, threatened her with a knife, and raped her. She left the house after they refused to give her food for nearly a week and then locked her out of the house. She explained that she had not left the house earlier because she had no idea how to seek help—she did not know where the police station was, knew nobody she could call for help, and did not even have access to a telephone.

Kristina, from Indonesia, reported that her employer's mother would beat her when her work did not meet with the woman's satisfaction. "She pushed my head against the wall, and she hit me. My nose was bleeding from where she pushed me against the wall. I didn't get beat that often, but it was more than just once. I called the agency, and they told me that after one week it would be okay." Eventually the beatings were severe enough that she feared for her life. "She grabbed me, beat me, kicked me. After that, I ran away."

One domestic worker told Amnesty International that she was abandoned by her employers. "The employers were not happy with my performance," she said. They told her that she would be accompanying them on a visit, and they had her pack a bag and load it into their car. "They left me somewhere near the roadside. I was walking around. It was evening already. I didn't know what to do. Two boys met me and brought me food, then they also left. I was walking around, and it was dark already. I was waiting in a coffee shop near where the boys gave me the food. The owner of the shop also gave me some food, and then he asked me to leave the place." Eventually, she met a woman who helped her locate a shelter where she was able to stay.

Malaysia's duty of due diligence includes the duty to protect individuals from violence at the hands of other individuals. This duty extends to protection from sexual violence, much of which takes place in private, and to protection from other forms of violence that occur within households. Such protection is particularly important for domestic workers, the overwhelming majority of whom are women and girls. As the Committee on the Elimination of Discrimination against Women has noted, "Women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers."³⁷

Mawar was 15 years old when she travelled to Malaysia to do domestic work. Her recruitment agent placed her with a family in Kuala Lumpur.

Asked to describe her day, she began, “I woke up at 5am.” She would make food, and then she would start her other chores at 6am. “I would do the sweeping, mopping, cleaning the furniture, washing the clothes, all the things I was trained to do at the agency. I did cooking also.” She would do this work until 9pm.

Her employers sent her back to the agency after four and a half months. “They said I did not know how to do the work.” She spent six months at the agency after her employers sent her back.

“The agent beat me. She also had me take off all my clothes and squat on the floor in front of the other workers and in front of her husband. She pushed my head into a pail of water so that I almost drowned. I couldn’t breathe. I was trying to gasp for air, and she pushed my head in again. Then she had me lick the water on the floor. She told me I had to clean the floor with my tongue. I had to do this while the others were watching me, just like a dog. The agent called them and told them all to look at me while I had to do this. The agent did this to me because she was not satisfied with me because the employers complained about me.

“Another time the agent forced me to eat five cockroaches while they were still alive. She also forced me to drink urine from other workers, including one who was having her period at that time. She made me eat small dried fish—I had to eat all of their fins, a lot of them.

“She burned my nipple with a cigarette. It was very painful. She put her cigarette to my nipple when I was sleeping. Then she stepped on my stomach and kicked me on my body.

“Another time she had another female worker take a bottle of deodorant and insert it into my vagina forcefully.

“She did something like this to me every day for six months. Sometimes she made the other workers do it for her. During this time she didn’t give me very much to eat.

“Others at the agency were treated the same way. One female worker had eyes that were blue and black like her head had been pushed against the wall. The agent cut her hair very short, and then she used a rattan cane to hit the girl. This girl was also not given food, just like me. I saw two other workers who were treated like me, abused,” although none endured the level of abuse that she did. “The other workers were 20 years or older,” she reported. “I was the youngest.”

UNSAFE WORKING CONDITIONS

Most employers, including those in agriculture, construction, manufacturing, and restaurants, are required by Malaysian law to maintain a safe working environment, and Malaysia has made international commitments to provide a system of labour inspection.³⁸ (Domestic workers are excluded from these protections.) Despite this requirement, workers reported hazards in every employment sector, with widespread variation in the approach individual employers take toward workplace safety. Some companies provide safety training and equipment; others do not. “Everyone at the company got training,” reported a 32-year-old

Bangladeshi man who worked in manufacturing. “At different companies, different things happen. Mine provides all safety.”

Factory workers who must work with or around chemicals often reported that they did not receive adequate safety equipment or training. Phuc, a 20-year-old Vietnamese man, gave this account:

While working, I have to handle dangerous chemicals, and the company does not provide me with any safety equipment. We have to use a chemical called “makeup” that makes our breathing difficult. This chemical is used to clean the machine when dirty or when it does not work well. I also have to use it daily to lubricate the machine that I work with. The smell of the chemical makes me feel ill and gives me a headache. Normally after work I feel very tired and sick. I also feel very ill at night after going to bed. It also makes the food I eat taste very bitter. I also have difficulty breathing after using it. I normally feel very ill like this about three or four times a month. I usually feel more ill when the machine gets spoiled and we have to clean the machine with the chemical. This happens to all the workers who use this machine. There are 20 of us, including three local workers. Most of us do not get masks, as there are usually only about two available. My co-workers have tried to ask the employer for more masks, but he told us that the two masks provided were more than enough. I therefore have not bothered to personally ask for more masks. I don't think it will make any difference.

Siraj, a Bangladeshi worker, gave a similar account, saying, “The company doesn't give us any safety. No gloves, no helmets, no shoes. I do welding in a workshop. They don't provide goggles or gloves. There is no safety equipment and no training.” And a Nepali man working at a plastics factory said, “The company provides uniforms, but nothing else. We have to pay for everything else ourselves—gloves, masks, shoes, have to pay for it ourselves. It costs 150 ringgit for a set. The shoes last one or two years; gloves and mask every two or three months.”

Plantation workers, many of whom are required to mix and apply pesticides or who must spread fertilizers, also reported that they frequently lacked proper safety equipment. “The pesticide bothers the eyes We don't have goggles. We get pain in the eyes—it feels like you're going to black out,” said one worker on a Cameron Highlands flower farm. “We don't get anything; no protection, no goggles. We complain, but the boss just says, ‘Buy it for yourself,’” reported Pramesh, a 22-year-old Nepalese man.

Twenty-one-year-old Sanjit, from Nepal, told Amnesty International, “My duties include pushing one of the machines used for farming, weeding, planting and spraying pesticides. I am required to mix the pesticides myself and was taught how to do so by my employer. I mix four types of different chemicals to make the pesticide. . . . I don't use any gloves for my hands or anything to protect my eyes while mixing and spraying the pesticides because they are not provided and I do not wish to spend my money buying them. The chemicals usually touch my hands. The chemicals smell very bad, even when I am able to use a mask provided by my employer. I am provided with a light paper mask which I have to keep for about three months. My employer only changes the mask after two or three months. I usually mix the chemicals about once or twice a week.”

And Farook, a 40-year-old Bangladeshi man, worked on a vegetable farm, where he moved fertilizer. “I could not take the work as it was too heavy and the smell of the fertilizer was

making me feel very ill. I was not provided any facial masks to protect myself from the fumes and at one point became so sick I had to miss work for three days," he said.

Workers at an electronics assembly plant described reactions that suggest exposure to skin irritants or heat rash; whatever the cause, it was clear that they laboured in exceedingly uncomfortable conditions. One woman told Amnesty International, "The work . . . makes our hands very itchy. When working, red spots appear all over our hands. They do not appear when we are not working, like now, during this weekend. Our eyes also turn red while we are working, but we are too afraid to complain." Another said, "In order to save energy, the company reduces the air conditioning to such a low level that it makes it very warm inside the factory. My face is covered with spots because of the work we do." Some of the workers at this factory reported that they received cloth gloves, but Mega, age 25, told Amnesty International that she did not. "I was told that this was because it would make my job more difficult," she said.

Workers at a timber processing factory told us that they sometimes worked with woods that contained powerful skin irritants. Even when they worked with ordinary woods, they found it difficult to work without masks and other protective gear. Mari explained:

Our work is dangerous. We have to handle dangerous wood such as the rengas, which releases a liquid.³⁹ It burns our skin when it touches our skins. It hurts very much. It is so poisonous that we need to get clinical treatment if it touches us. If consumed, it will kill a person. Cloth gloves do not help, and it also destroys clothing if it touches it. Our clothing has to be thrown away if it comes into contact with the liquid. The liquid cannot be washed off once it touches clothing.

We are also not provided with any facial masks or goggles, although we have asked for them many times. There is a lot of sawdust in the factory, so much so that the sawdust is collected and sold after our work. All of us find the sawdust to be a problem, especially when it comes to our breathing. Two of us have the asthma, and the dust makes breathing very hard. One of them has returned to Indonesia because of his inability to cope with the dust. The other cannot afford to return to Indonesia and therefore has been forced to endure the difficult conditions. He has fainted a few times because of his breathing problems. With regard to other safety issues, our employer does not provide us with any shoes and because some workers cannot afford shoes, they walk barefoot. Many have stepped on sharp objects such as nails.

Finally, it appeared that the lack of information on workplace hazards led some workers to make unsafe choices. For instance, Amnesty International interviewed three workers in the shack where they lived on a cabbage farm. A separate, windowless room next to the bedroom stored open containers of pesticides, which the men mixed and sprayed every five days. They are given masks to wear when using the chemicals, but they said that they preferred to use handkerchiefs instead because they found the masks uncomfortable.

ACCIDENTS AND ILLNESS

By law, employers must compensate workers for most workplace injuries and should carry insurance that covers such injuries. In fact, employers often require workers to pay for their own medical care when they suffer accidents on the job. They are even less likely to pay for care for illness that is unconnected to workplace injuries. And when workers are disabled, whether through accidents or illness, some employers pressure them to return to their home countries, where the employer will not be held responsible for their care. Workers rarely, if ever, receive insurance compensation for on-the-job injuries. (Employers' obligations under Malaysian law are discussed more fully in Chapter 5, Laws and Policies Governing the Employment of Migrant Workers section.)

"One friend of mine had an accident," Babar said, describing events that took place in early 2009. "He was working, and the forklift went back. The driver didn't see him. He couldn't move, and his left thigh was broken. He was taken to the hospital, and he had a cast put on him." The workers took up a collection to pay for his medical care, which was about 800 or 900 ringgit; the company did not pay. "This man, we took care of him. I used to feed him," said Babar. After he had recovered enough to travel, the company sent him back to Bangladesh.

Migrant workers told Amnesty International of many other instances in which employers responded to serious accidents by attempting to send workers back to their home countries. For example, Nyunt came to Malaysia from Myanmar in 2007, when he was 17, and began to work in a pipe fitting factory. A large pipe fell on him when it was still hot and burned his legs, he explained, rolling up his trousers to show us the scars. "The boss didn't do anything, no help. He told me, 'You go back to Myanmar. Go back.'" The man first sought care at a local clinic, where he was referred to a hospital. His employer refused to pay for the hospital treatment and instead continued to insist that he should return to Myanmar. "So I asked for my passport. I said, 'Please give me my passport,' but he didn't give it to me." The man travelled to the Cameron Highlands, where his brother was working, and found a job on a plantation.

However, some workers reported that employers covered their workers' medical costs when they suffered accidents. "Once I was admitted into the hospital because of a snake bite and spent three days out of work," a Nepali plantation worker said. "This happened during work, and the employer paid for the hospital."

Such accounts were, unfortunately, the exception. More commonly, workers were responsible for covering the cost of on-the-job accidents. For instance, Xuan, a Vietnamese woman working in a factory in Klang, told us that a Bangladeshi coworker broke his leg at work one day. "This happened when he was cleaning the machine. He fell down. Before sending him to the hospital, the boss made him sign a piece of paper to agree to return expenses." A male worker at the same factory corroborated the employer's practice of charging workers for medical expenses incurred from on-the-job injuries. "If any accident happens in the factory, they will go to the hospital themselves; the boss will pay and then deduct," he said.

Despite the legal requirement that employers carry insurance to cover workplace injuries, Amnesty International heard of instances in which employers withheld insurance compensation. Minh, a 21-year-old Vietnamese factory worker, gave this account of an

accident in which he lost his left hand and his employer's response when he asked about insurance compensation:

On 5 January 2009, I met with an accident while controlling the machine. The accident happened because the machine was an old machine and faulty. Something got stuck in the machine, and I had to switch it off to remove the stuck object. While my hand was there, it cut my hand off. I held my hand and ran over to the boss. The boss then took me to the Selayang General Hospital. They did not take the severed hand with us to the hospital. I was admitted into the hospital for about a week. My employer paid for my hospital bill. I was also paid my wages for the week that I was in hospital.

After he was discharged from the hospital, his employer paid for two follow-up visits to the hospital and paid his basic wage of 500 ringgit (\$145) per month until May 2009. Beginning in May, the employer reduced his pay to 350 ringgit (\$100) per month after he asked about insurance compensation for his injury:

There were many other accidents in the factory, but mine was the most serious. Our employer had threatened us never to make complaints against him. He said that he would sack anyone who complained against him. Since the accident, I have been asking for compensation. When I asked him about any insurance I should be entitled to, he said that there was none. He told me that he had received a 3,000 ringgit [\$875] insurance payout but had used most of the money to pay for my flight ticket back to Vietnam and that there was only 1,000 ringgit [\$290] left. I then asked for assistance from the Office for Human Development and made a complaint with them. When he found out, I was called into his office and scolded. He also hit me on the head a few times with a rolled-up newspaper. He then threw the paper at me when I left the room. This happened just this month. After that happened, my wages were reduced to 350 ringgit. My employer has been trying to send me back to Vietnam since my discharge from hospital following the accident. He also frequently threatens me. I have also lodged a police report about this. I do want to go back to my family but need to collect my insurance and compensation first. I can't really work now with my hand amputated.

If many employers are reluctant to cover workplace injuries, they are even more so when workers fall ill. When Maniam had a burst appendix after work hours in March 2009, he worked for one month without pay to help cover the 1,400 ringgit (\$410) hospital bill. A plantation worker in the Cameron Highlands told Amnesty International, "When I was sick and had a fever, I still had to work. The employer threatens to kick us out if we rest. When I asked for the day off because I had a fever, he threatened to send me back" to Myanmar. And when Rabi was hospitalised in November 2008 for appendicitis, a member of the church that he attended paid his 2,000 ringgit (\$585) hospital bill. "The boss didn't pay me during the days I was off. The boss paid [me] nothing, then didn't pay for the hospital. I had to buy medication on my own."

LIVING CONDITIONS

Many workers, including most of those interviewed by Amnesty International who were employed in the manufacturing, construction, and plantation sectors, live in housing supplied by their employers. Malaysian law requires that such housing must be in a good state of

repair and meet other basic standards, including free and adequate piped water and an adequate electrical supply.⁴⁰

Amnesty International delegates visited and photographed over a dozen dwellings where migrants were housed. None appeared to comply with these standards.

One housing area that Amnesty International visited was a makeshift facility made up of two blocks of linked shipping containers. In effect a self-contained village, this “container city” had a convenience store, kitchens, showers, and sleeping quarters all made of containers set on concrete blocks. The narrow spaces between each container were covered over with zinc sheeting to make hallways in each of the two blocks. One block housed women; the second, about 50 metres away, housed the men. About eight people lived in each container, and each block was made up of about a dozen containers.

The women who lived in the containers reported that they did not feel secure there, and concern for safety was a common theme among many women who worked in factories and lived in housing provided by their employers. “There are men walking around our living quarters. We feel a bit scared,” a Vietnamese woman stated. “There’s no privacy here.” One member of the group told Amnesty International that she had been forced into a car in an attempted robbery on her way home from work. She was pushed out of the car after the robbers discovered that she had nothing of value on her. Members of a local gang raped a third woman. “The first year, we would work the night shift, and the girls would carry a stick strapped to our backs and run as fast as we could back to our house,” the first woman recalled.

Some of the group interviewed by Amnesty International in the container city had previously worked in a factory in Melaka, about 145 km southeast of Kuala Lumpur. One woman told Amnesty International:

In Melaka, the local people would chase us; they would know exactly when we got off work, and on our way back to work they would chase us and try to pull us into their cars. Try to rape us. The boss refused to provide security, said it was too expensive, even when we offered to pay half. This happened all the time, and we were so scared. We complained to the boss, and the boss did nothing.

Women who worked elsewhere had much the same concerns. “Our biggest problem is safety,” an Indonesian factory worker said. She explained:

We’ve been robbed. They took all our property, our handsets [mobile telephones]. Last month this happened, in June 2009. Robbers came to the house and robbed it. Jewellery we kept in the home, but the robbers took it. They snatched all the handsets. We were not at home when this happened. The house has already been robbed three times. The robbers just come to the house and snatch anything.

Other workers also reported that they lived in converted containers. One worker, who estimated that the container was about 16 feet long by eight feet wide, said that he was living in a converted container with six other workers. “The container is very hot because there is only one fan on each side,” he said. A standard 20-foot shipping container has an

inside length of 19 feet four inches and an inside width of seven feet eight inches, according to one industry website.⁴¹

Other housing provided to factory workers was also substandard. For example, a Nepali worker who came to Malaysia as a 16-year-old in 2006 described the housing he shared with nine other workers at a plastic factory. "Sleeping was in a hostel, but they didn't give anything else. There was no bed. . . . Lights would sometimes work and sometimes not," he told Amnesty International. A worker at another plastic factory said, "We stay at a workplace hostel [that] the company provides. The water is not regular, electricity cuts off, and it's not clear when we will have electricity and when not. Water comes through when it rains."

Khaleel, a 25-year-old Bangladeshi factory worker in Kuala Lumpur, shared makeshift accommodation with nearly 50 other workers. "There is no water, so we have a pail that we use to collect water when the rain comes. We use this water from the rain for washing. We bring drinking water from the other side [of the factory compound]. We boil the water to drink," he said. Mostafa, another Bangladeshi worker, said that 30 workers shared quarters near the factory in Klang where they worked. "It is like a shop block, maybe 40 feet by 19 feet," he said. "Thirty people cannot be there, but we have to stay there. We sleep on the floor, one next to the other."

Housing on plantations is often extremely rudimentary. "We have electricity but not water; we get water from the stream," a plantation worker from Myanmar said. A Nepali worker on a different farm said of his housing, "We don't pay for the hostel, but we don't have power supply—no electricity, no direct water; we have a pipe from a local stream. Conditions are not that great; the roof leaks, so we put a plastic cover so the rain doesn't come in. The toilet all goes to the river; there's no sewage."

Rarely, Amnesty International heard of employers who provided adequate housing for their workers. "The hostel where we are is good; there's water, electricity. Two people share a room, or sometimes each room has only one occupant. All are made out of zinc, with electricity. There's no rain coming through it," a Bangladeshi plantation worker reported.

Employer-provided housing is generally restricted to the employees only—that is, their families ordinarily cannot live with them. The wife of a factory worker described how they handled these restrictions:

We are very poor and cannot afford to pay for our own accommodation. I therefore stay in the accommodation provided by my husband's employer. Once he saw me there and got very angry and scolded us badly. He did not want me to live there. We do not have a choice and have to continue hiding in this way. Every day, my husband locks me up in his room from the outside with a padlock when he leaves for work in the morning. The room is in a metal container, and it gets very hot inside. There is no window. I do not have access to a bathroom and have to use a bag in the room for my toilet. We are very scared of getting caught that even after he returns from work in the evening, I do not leave the room. My husband needs to continue his job and earn money to support his mother, his two siblings, my mother and our child in Myanmar.

Construction workers who are building apartments or office blocks generally sleep in makeshift accommodation on site. “There is plywood on the floor, and on the top we have put a carpet. It is in a building where we are working,” an Indonesian worker explained. “There’s no bed, just a carpet and a blanket. There are six people. . . . We all sleep just like that.”

The ILO notes that bad living conditions can be a marker of exploitation: “Exploitation can include exploitation through bad living conditions. This includes being denied freedom of choice as to the location or living conditions, or being forced to live in overcrowded conditions, in unhealthy or unsanitary conditions, or being forced to live in conditions where there is limited or no right to privacy. This can also include exploitation through being rendered homeless and being forced to live on the street.”⁴²

TRAFFICKING IN PERSONS

Many of the migrant workers interviewed for this report are recruited on the basis of deception and fraud. Recruitment agents deceive workers about the work they will perform, the wages they will receive, the hours they will work, the time off they will have, and other conditions of employment. Agents mislead workers about the time it will take them to repay the loans they take out to cover recruitment fees. Agents routinely withhold contracts until workers have paid those fees, and then often give workers contracts in a language that they do not understand; at times, they give workers nothing at all. In some cases, agents knowingly recruit workers who are under the age of 18 and obtain falsified passports to conceal their age. These acts are more than mere dishonesty: recruitment agents do these things for material gain—they defraud the migrant workers who are their clients.

Workers are transported to Malaysia and received by agents or employers once they arrive, and the fraud continues. Malaysian agents and employers often do not honour the contracts that workers have signed in their home countries. Agents and employers may extract additional sums of money for immigration fees that workers have already paid. They may fail to secure proper work authorisation for their workers. Outsourcing agents, in particular, may promise work that never materialises.

The purpose of these acts is exploitation. Migrant workers perform arduous, unpleasant and often dangerous labour for little pay—less than they were promised, and even less once deductions for immigration fees, rent, food and penalties are taken out of their wages. Some employers withhold pay entirely because they know they will get away with it. They may not cover the cost of medical care for workplace injuries; in fact, some employers encourage workers who have become disabled to return to their home countries immediately. And many employers provide squalid housing to their workers, a factor found by the ILO to be linked to exploitation.⁴³

Workers stay because they have little choice. Many must repay large sums of money they have borrowed at high interest rates, and their meagre incomes are drastically reduced by the many and variable deductions that employers often take. Bangladeshi workers, in particular, have such sizeable loans at such extraordinary rates of interest that many will never be able to pay off their debt. Other workers, including many Indonesian domestic workers, work without pay for months or years to pay recruitment agents. Whether they are using their

labour itself or the wages from their labour to repay their debt, many workers are in situations akin to debt bondage.⁴⁴

Workers also have little choice for other reasons. Some are beaten if they refuse to work or if they do not work fast enough, long enough, or to the standard the employer demands. Many more are threatened with harm or subjected to practices designed to impress upon them that they are powerless to refuse their services—they may be under constant vigilance by supervisors or armed guards, locked into the workplace or prevented from leaving the grounds, refused permission to make telephone calls. Some workers described being subjected to profound affronts to their religious practices (such as an employer's trampling of a prayer mat and holy book), humiliation (being forced to eat cockroaches, stand in one's own urine, or wear embarrassing signs), or petty displays of power (for instance, being denied toilet breaks or required to eat while crouched on the floor) that appeared to be calculated to reinforce their servile status.

As a practical matter, workers cannot leave their employers, at least not without considerable risk. Nearly all employers hold their workers' passports and other evidence of legal status, documents that the workers must be able to present on demand to law enforcement authorities. If they cannot, they are at risk of detention or, as discussed in the following chapter, ill-treatment and extortion.⁴⁵ Moreover, workers who switch employers are likely in breach of their work permits and thus no longer lawfully in the country. Some workers are able to break their contracts and return to their home countries, but only by taking a considerable loss—they must typically pay penalties to their employers or agents and must also cover all of the costs of their return trip.

Put simply, much of this work is forced labour—work that is involuntary and extracted under the menace of a penalty.⁴⁶

Workers are the victims of trafficking in persons when they are recruited, transported, harboured or received by means that include fraud and deception, and when the purpose for doing so is to exploit them. Forced labour and practices similar to slavery, including debt bondage, are always exploitative.⁴⁷

Much of the work performed by the migrant workers interviewed for this report constitutes forced labour, and many workers are in situations akin to debt bondage. More generally, this report demonstrates that migrant workers in every sector of employment are routinely subjected to exploitation even if their individual cases do not clearly rise to the level of forced labour or debt bondage.

In short, many of the migrant workers interviewed for this report are victims of trafficking in persons, as that term is used in international law.

Trafficking is perpetrated by individual agents, but the government of Malaysia facilitates these abuses in several ways. Its loose regulation of agents and the abusive outsourcing arrangements it tolerates allow trafficking to flourish. As the U.S. Department of State observed, "The government also continued to allow for the confiscation of passports by employers of migrant workers—a common practice in Malaysia. This practice is recognised by many in the international anti-trafficking community as facilitating trafficking."⁴⁸

Malaysia's failure to enforce its laws governing workers' rights also facilitates trafficking by allowing exploitation to go unchecked. (Amnesty International also documented over a dozen cases, including several in 2009, in which Malaysian immigration officials directly engaged in trafficking. These cases are discussed at the end of this chapter.)

International law requires states to criminalise and prosecute forced labour and trafficking in persons. International labour standards, including those of the International Labour Organization, also establish benchmarks for the protection of workers from exploitation. Under this framework, Malaysia's obligations are to protect trafficked persons both as victims of crime and as exploited workers.⁴⁹

Malaysia enacted an Anti-Trafficking in Persons Act in 2007.⁵⁰ In its annual report on trafficking in persons, however, the U.S. Department of State criticised Malaysia for its delay in implementing the act and in particular for its failure to investigate, prosecute and punish trafficking in persons. For example, the report noted, "The government did not report any criminal prosecutions of employers who subjected workers to conditions of forced labor or labor recruiters who used deceptive practices and debt bondage to compel migrant workers into involuntary servitude."⁵¹

In 2009, the U.S. Department of State determined that Malaysia's weak response to trafficking placed it at Tier 3, among those countries "whose governments do not fully comply with the minimum standards and are not making significant effort to do so."⁵²

STATE AGENTS' PARTICIPATION IN TRAFFICKING

Amnesty International interviewed over a dozen refugees from Myanmar who had been taken from Malaysia to the Thai border by immigration officials and sold to human traffickers, some as recently as early 2009. Several had been subjected to this practice more than once.

The men and women Amnesty International interviewed gave consistent accounts that also matched the findings of an April 2009 report of the U.S. Senate's Committee on Foreign Relations.⁵³

Thiri, age 27, came to Malaysia in 2007 from Myanmar. He was arrested in late 2008 and sentenced to several months in jail and two strokes of the *rotan*. He was caned in January 2009. He gave a particularly detailed account of his experience after his caning:

I was brought by immigration officials to be deported to the Thai-Malaysian border. When the immigration officer arrived, he said, "You all were deported to the Thai-Malaysia border because you have no documents, and also you cannot go back to Burma." This immigration officer was Malaysian, and he spoke Malay to us. He knew we were all from Burma. There were 60 of us in the group. After the immigration officer spoke, we were forced to get into vehicles. . . . There were five vehicles all together. Mine had 13 people in the back. The driver and two immigration officers were in the front and 13 detainees in the back. It was a van with seats in the back. There were windows, but you could not open them. We could see outside through the windows, but from the outside, people could not see into the van because there was a sticker over the windows. The van was white, and it said Immigration Department on the side. There were no lights on the van. All of the vehicles were the same kind.

We were all handcuffed, and we were brought to the Thai-Malaysian border, to a town in Malaysia. . . . At this town, there was one shop that the immigration officer stopped at. He parked behind the shop and made a telephone call somewhere. Twenty minutes later, some people came to where we were. We were forced to get out of the immigration car, and we changed to another car. These people who had arrived, they had guns. When the detainees were transferred from one vehicle to another, we were watched by these men holding guns on us. They watched us because they were afraid the detainees would run away.

We were brought to some house. I think this house belonged to these traffickers. After we arrived at the house, the traffickers asked us all to give money, 2,500 ringgit [\$730] per person, to go back to Malaysia. They divided us into two groups, those who could pay and those who could not. If someone can pay, he is allowed to telephone someone to get the money. The traffickers gave him a bank account, and then he can call his friends or family to bank in at this account.

I can't pay this money, so I was in the other group. The people who can't pay, the trafficker threatened them. He said, "I will send you to the fishing boats." The traffickers tortured the people who couldn't pay the money.

There were seven people who cannot pay the money, including me. We were scared that the trafficker was going to send us to the fishing boat or somewhere. We were scared, so one night we tried to get away from this house. At night we escaped from the traffickers and walked through the forest. We saw a light in the distance, so we went there. We waited there for a bus or a car to come along. While we were there waiting, a taxi came to us. Four of us hired this taxi, and they drove away. The rest of us, three people including me, went into the shop, and we waited for that taxi to come back.

While we were waiting for this taxi, the traffickers came to this shop. So we tried to run away. We were running away, and we saw some other people, so we ran up to them to ask for help to get to the nearest bus stop or the nearest taxi stand. These people asked us for some money. They said that if we paid them some money, they would take us. If we could not pay, they would not help us. While we were talking with these people, the traffickers arrived. It was daylight by this time, and we saw a police car near there. We went over to the police and asked for help. We said that some gangsters were chasing us. We asked the police to arrest the traffickers. The policeman said that he could not arrest them, and he called his commanding officer.

When the officer arrived there, we discovered that this officer and the traffickers were friends. They knew each other. So then we were trying to escape from the police and the traffickers at the same time. We could not run far. We got arrested, and the one of the traffickers beat us up. He forced us to get into a car. The car that he forced us to get into belonged to the traffickers, but the police drove this car. These policemen were Malaysian police.

We were brought back to the same house. The other four from our group of seven, the ones who had taken the taxi, they were also at the house. The traffickers beat up all seven of us. They were shouting at us, saying, "Why did you run away? You cannot run away here!" They were kicking us and using motorcycle chains to hit us. They hit us and kicked us everywhere. One hit me on the back of the head with brass knuckles, and also on my left temple and right cheek. Some of my ribs on my right side were broken. I was hit on the back and kicked in the shins. I have pain here until now. A lot of people hit me; I don't remember exactly who or how.

After we were beaten, we all fainted. The traffickers threw some water on us. One hour later, some of them came back and hit us all over again.

I couldn't eat anything for two days. . . . The traffickers asked us to telephone some people to get money. Before it was 2,500 ringgit they wanted. Now they asked for more. It wasn't 2,500 ringgit anymore, because we had run away. So the seven of us had to pay 3,300 ringgit [\$960] now. They said, "If you cannot pay this money, tomorrow you will go to the fishing boat."

So all seven of us telephoned to try to get money. Of the seven, three were able to get the money. The four who could not get the money, they were bought by one person who was Thai. This person bought those four people.

The other three, including me, were able to get friends who agreed to pay the traffickers. The other two were okay; their friends and family were able to bank into the traffickers' account. But I had a problem because my friend didn't pay this money. The two persons who had paid were sent back to Malaysia. Only I stayed there. I was beaten again.

For four days, I had to stay in the house. I didn't go anywhere. Another group of detainees who had been deported to the Thai-Malaysian border came in.

The traffickers got me to be a sort of leader of this new group of 60. I was the security for the traffickers. I had to clean the house and cook for everybody.

Since I was the last one left from the last group and couldn't pay, they turned me into a sort of trafficker. I had to beat up anybody who didn't pay. I had to do whatever the traffickers told me to do for three months. I had to beat people up and take care of the house. Sometimes the traffickers would have me sell drugs. Some

policemen would come to this house and ask for money. When the police had to be paid, the traffickers didn't go to the police; I did that.

These policemen came occasionally. Usually they would ask for 500 ringgit [\$145]. The police were Malaysian police—they wore a blue uniform like the one they still wear. It was always police who wore the same uniform.

One day the traffickers told me that there would be a police raid. They told me to stay put in the house and not to go anywhere, just take care of the detainees. The police came to raid the house, and I decided not to stay there. I went out to look from a distance. The police went in and just looked around. The detainees were there, but they made no arrests and did nothing, just left.

The next day, I thought that my situation was very dangerous because everybody thinks that I am working with the traffickers. I was scared to stay there, so I asked the traffickers to allow me go home. But the traffickers don't want me to go. They said they would give me 50 ringgit [\$15] per day, they would give me a telephone, they would give me a motorcycle. They would give me everything I needed.

But I didn't want to work for them, so I waited one day until there were no traffickers in the house, and then I ran away. I had made a friend who was a taxi driver, and this taxi driver took me to the bus station. I took a bus to the place I had been living. I had a little money because I had been working for the traffickers, so I had money to pay for the bus fare. The bus fare was three ringgit and 60 sens [\$1.05]. I also paid the taxi driver 100 ringgit [\$29] to take me to the bus station.

The house was in Malaysia, not Thailand. I can't say exactly when I left the house, but it must have been early April 2009.

4. ILL-TREATMENT AND EXTORTION BY POLICE AND RELA AGENTS

“I have no rights and have to take everything that happens to me. I cannot speak up because of who I am.”

—Htun, a 32-year-old undocumented worker from Myanmar

Travelling to and from work or school, in the market, at their workplaces, and even in their own homes, migrant workers are always at risk of being stopped by the police or by agents from the People’s Volunteer Corps (Ikatan Relawan Rakyat or RELA), a volunteer self-defence corps created in the 1960s to provide vigilance against Communism. Police and RELA stops have a veneer of legitimacy, in that police and RELA agents are authorized by law to examine individuals’ identification documents and investigate their immigration status. Often, however, in reality these stops are moneymaking ventures, nothing more than opportunities for extortion.

The most questionable aspect of Malaysian immigration enforcement is the license given to untrained RELA volunteers to stop people on the street or break into their homes without warrants, question them, and detain them. Often unfamiliar with the documents they are examining and indiscriminate in the extreme, RELA agents frequently arrest individuals who are lawfully present in Malaysia—including, in recent years, the wife of an Indonesian diplomat and an African-American tourist, a lawyer with the U.S. Navy.⁵⁴ As those cases illustrate, RELA’s approach to immigration enforcement is, by all accounts, unsophisticated in the extreme, consisting of crude profiling based on apparent race or ethnicity and the too-common attitude that arrest is the appropriate default response when confronting someone who appears to be a foreigner. RELA agents frequently subject those they detain to humiliation, physical abuse, theft, and extortion. Although immigration officials assured Amnesty International that RELA had no immigration enforcement role after June 2009, Amnesty International observed RELA agents making arrests as part of an immigration roundup in mid-July 2009, and news reports of RELA involvement in immigration enforcement continued into early 2010.



Immigration and RELA agents conduct a round-up in central Kuala Lumpur, July 2009. © Amnesty International (Photo: Vinod Ravindranathan).

Regular police engage in extortion as well, and may threaten or inflict violence on those who cannot pay. Because so many migrant workers suffer such abuses—nearly every worker Amnesty International interviewed had been the victim of police extortion or knew somebody who had been—they are understandably reluctant to report other crime to the authorities. “Some local gangs, they do robbery,” said one Nepali worker who was living in the Klang Valley. “They use knives. There is no protection. We cannot fight if they pull a knife because police will take us. They are local. We cannot go to the police station because we are foreigners. We are not stable here.”

In fact, because police and RELA agents are often out of uniform, they are indistinguishable from common criminals. “Often, the police use normal civilian clothing,” said Fernando, an Indonesian man who was working at a sawmill. “This is a problem because often we do not know when someone is really a police officer or not. Often, civilians also harass us and take money from us, pretending to be police officers. I hope that the police will stop arresting while in civilian clothes because this is being abused a lot.”

POLICE ABUSES

Htun, an undocumented worker from Myanmar, described his typical experience with the police:

Police in patrol cars often stop me, whether I am alone or with my friends. They call me and ask for documents. When I say that I have none, they tell me to get into the car. There, we negotiate. They start by asking for 500 ringgit [\$145]. I negotiate by telling them that I cannot afford that. They often drive us away, take all of our money and then drop us off. Often, I have to walk very long distances back because I don't even have any money left for a bus. Sometimes, if we don't have any money, they drive us to our friends' home to collect money. Once when I did not have any money, I was hit and then told to call a friend who would pay them something. If we tell them that we have no money, they search us themselves to make sure. Sometimes, the police try to scare us by driving us toward the police station, stopping just before we reach [there]. When that happens to me, I get very scared. I usually have to pay them about 50 to 150 ringgit [\$15 to \$44].

Markets offer promising targets, providing a reliable stream of migrants who are carrying cash to make purchases. "The police normally wait near the shops to extort money from us, especially the women when they go there to get our groceries and other daily supplies. They usually start by asking for 1,000 ringgit [\$290] but go down to 300 ringgit [\$87]," reported Fernando, who lived and worked in Kajang.

Workplace raids are another potential source of revenue for police who wish to engage in extortion. Malik, a 24-year-old man from Indonesia, said that when he was working in Kuala Lumpur between 2005 and 2008, police would occasionally stop by the construction sites where he was working. "Sometimes they would check our documents. Sometimes they would go into big accusations. They would take our handphones [mobile telephones] or cigarettes. We would say that we are not lying, we are telling the truth. These police wore uniforms, and usually they would come on motorcycles. . . . They would say that they needed coffee money."

Raids on homes are potentially even more lucrative. In some of the accounts given to Amnesty International, the actions of police in such raids amounted to little more than burglary. For example, Fernando reported, "The last time the police came, they broke down the doors to our homes. They came into the house, opened all our bags and took away all our valuables."

The police who carry out raids and individual arrests often threaten or actually inflict violence on those they detain. Santos, from Indonesia, said of a 2008 police raid on the factory where he worked, "The police came in with batons and were hitting workers. I was also hit very hard"

Refugees are particularly easy targets for police who wish to engage in extortion. A 43-year-old refugee woman from Myanmar described one encounter with the police:

I was very lucky when the police patrol caught me. They asked me in Malay, in English; I could not answer properly. They asked for money. They searched into my body, all my clothes. Police searched my whole body. I felt violated, but I didn't have a single cent. I was

penniless, and I couldn't answer them. So they kicked me out from the car. I didn't know what they wanted. They showed the sign for money. I shook my head no. I was crying. I could only say that I had a baby. To warn them not to do anything because I had a baby, I said, 'Got baby one.' I said, 'No, no,' when they asked me for money.

They put me in the car and drove around, to scare me. . . . I kept telling them that I had a baby; I could not communicate that I didn't have any money. They left me alone, [but it was] a very unpleasant experience. This happened in 2007. Now I can talk, but that time I cried, and it was a very bad experience.

I learned from common sense, and [now] when police pass by I dare not to run and just pretend not to notice and not be scared, and to cross the road or the bridge and go into the building.

Thaung is an asylum-seeker from Burma who has not yet been registered by UNHCR. He was stopped by the police in April 2009. "They wanted passports, documents. They wanted to take money from my pocket. They were beating me. They pushed me. One used a fist, and maybe he had something in his hand, maybe his handcuffs. He swung at me and hit me in the forehead. I fell down," he said.

Some nongovernmental organisations that work with refugees issue their members with cards in an effort to provide them with some protection against arrest and harassment, but such cards have no official standing. A 20-year-old Burmese refugee gave what Amnesty International found to be a typical account of police reaction to these cards. "The police have stopped me two times," he said. "The first was behind this building. They asked me, 'Do you have ID?' I didn't have any." He showed them the card that the refugee organisation had given him. "'This card, no,' they said. 'We can arrest you.' I was so scared. I apologised. 'Don't take me.' I am so—I am crying." The police let him go when a member of the organisation that issued the card saw them and gave the police some money.

Baurey had a similar experience. He described his encounter with police in March 2009:

Two police came by on a motorcycle. They asked me for my ID card, but I have nothing to show them. I say to them, "I am a refugee." I show them my community card. They laugh. They have never seen this kind of card. They do not recognize this card. They say, "We arrest you." After they arrest me, I apologize. They say it cannot be. I explain that I have never been involved in any criminal act. Later they call the police station. The police patrol came to me. They asked me to get inside the car. They take me to a dark place, and they ask me, "How can we have you?" I say to them that I do not have proper documents, so I will give you everything I have. At the time, I was not alone. I was with one friend. I only had 100 ringgit [\$29] at the time. They asked how much I had. I said 100 ringgit. "This is very little," the woman of the police said to me, "so I can't have you." . . . They are talking in Malay. I don't know what they are saying. So later they say, "Just give us everything you have." I turned over my mobile, my money. I gave these to them. They said, "You can go."

UNHCR registration helps to some extent, but repeated accounts indicate that even those with UNHCR cards were stopped by police, threatened with arrest, and subject to extortion. Police have stopped Zaw, a refugee from Myanmar with UNHCR registration, and taken

money from him three times, most recently in May 2009. “When they caught me, I showed them my UN card. They say that’s no use, this card is no use. So they asked for money.” He paid them 100 ringgit (\$29). His wife avoids leaving the house after she was stopped by police in December 2008 on her way home from the market. “After the market, I had 20 ringgit [\$5.85] left over, so I had to pay them 20 ringgit,” she said. She also had to give the police some of the things that she had bought. “From this time I haven’t really gone outside. I’m scared to go outside.”

Amnesty International heard a similar account from Than, a refugee from Myanmar with UNHCR registration. “The police have stopped me very often,” he reported. “Sometimes the police will stop us and ask for our passports. We can’t show passports, so then they will say that we are going to be taken to prison. But if we can pay them money, they will let us go. Sometimes they will check all our pockets. What we have, they take. If you have a phone and it is quite good, they will take it. This has happened to me several times.” He estimates that he has been stopped by police at least 10 times since he arrived in Malaysia in December 2007.

Other refugees told Amnesty International that they were stopped by police and forced to hand over money even though they held UNHCR cards. “I was cycling one day and got caught,” a Sri Lankan man said. “They asked, ‘How much you have in your hand?’ I had 20 ringgit [\$5.85], so I had to give to them, and they let me go. Even with the card, they asked me how much I had. This happened about one year ago, in 2008 soon after the new year.” Similarly, Moe, a 19-year-old from Myanmar, told us that he had been stopped by the police six times, most recently in May 2009. They took money and his phone from him even after he showed them his UNHCR card. Police stopped Peter, a 47-year-old refugee from Myanmar, on his way to the UNHCR office in April 2008; he had to pay them 200 ringgit [\$58] even though he showed his UNHCR card.

Because the passports of most documented workers are confiscated by their employers, these workers are also readily victimized by police. For example, police stopped Assam, a Bangladeshi worker, as he was walking to a convenience store near the Petronas towers. He showed them a photocopy of his passport, but they refused to accept it; they asked if he wanted to “settle” the matter there or go with them to the police station. They asked for 1000 ringgit (\$290), but after some negotiation he persuaded them to accept 250 ringgit (\$73) instead.

Amnesty International also heard accounts of arrests of children. In April 2008, Sanda’s children, then 11 and 12, were caught by the police as they waited at a bus stop on their way to school. The children then called their mother. She and her children are registered with UNHCR, but she feared that she would also be arrested if she went to the police station. Instead, she asked a friend with residency status to speak to the police. The police demanded money for their release and let the children go when the family paid 600 ringgit (\$175) per child.

The Director General of Immigration assured Amnesty International that his staff had asked police to honour photocopied documents. “We also issue an I-Card,” he said, referring to the new biometric identification cards that some workers had shown Amnesty International. “But we also understand that they have to honour those photocopied documents.” In fact, he

said that the new identification cards were not technically acceptable as evidence of lawful presence in the country. “We have yet to put down in law that the I-Card is a legal document,” he said. “We are updating the law, and the issue will be overcome.”⁵⁵

In a particularly welcome step, the Ministry of Home Affairs announced at the end of December 2009 that it planned to issue identification cards for refugees recognized by the UN. “As long as they are recognized as refugees by the UN, they can stay here temporarily. They cannot work here, but they can do odd jobs,” the Secretary General of the Ministry of Home Affairs said, as quoted by the Associated Press.⁵⁶

In 2007, I paid an agent in Malaysia 2,500 ringgit [\$730] to obtain a work permit for me. I did not know that the permit I had obtained was fake. In 2008, when I was trying to leave Malaysia to Denpasar through KLIA airport, I was arrested because of the fake permit. At the time of my arrest, I had about 750 ringgit [\$220] and 6 million Indonesian rupiah [\$650] in cash with me. I was taken to the KLIA Immigration Depot, where they recorded my possessions. When I was then taken to court some days later, they returned my possessions, including the money. I found that 1 million rupiah was missing. There was no decision at the court, and I was then taken to the Sepang police station, where I had to deposit my possession again and it was recorded. The police officer there took 390 of my Malaysian ringgit [\$115]. Three days later, I was sent to the Sungai Buloh prison, but they did not take any of my money there. I was kept in the Sungai Buloh prison for two months, after which I was again taken to court. This time, the court sentenced me to imprisonment but ordered that since my sentence had already been served, I should be released. I was then taken back to the KLIA depot, where I checked in my cash and possessions. When it was time to leave the KLIA, I found out that all my Malaysian ringgit had been taken. When I complained, the officers told me that I had already signed a document and that I did not have the right to complain. . . . By that time, my airplane ticket had expired, and the ticket could not be used any longer. A friend of mine from outside managed to buy me a new ticket, and I left Malaysia.

—Jose, interviewed in Kuala Lumpur

ABUSES BY RELA AGENTS

RELA agents are responsible for the most rampant abuses against migrants. Although they are volunteers and largely untrained, RELA agents are empowered to enter private homes without warrants and to arrest and detain individuals for suspected immigration violations.⁵⁷ They arrest indiscriminately, often detaining UNHCR-recognized refugees and individuals with legal authorisation to be in the country. In many cases, agents used those sweeping powers as a license to terrorise migrant workers and their families, steal money and valuables, and destroy their few other possessions.

Malik reported that in the Cameron Highlands, RELA agents were more of a concern than the police. In March 2009, he said, “the RELA came in and checked our permits.” Even though his permit said that his employer was in Kuala Lumpur, the RELA agents did not question him about his work authorisation. Instead, they appeared to be more interested in petty theft: “We were asleep. There were two handphones [mobile telephones] just here” when the RELA agents entered the room, he said, gesturing to indicate that the phones were on a table. “After the RELA left, the handphones were missing.”

Other accounts reinforced the conclusion that RELA agents are often more interested in personal gain than in carrying out any legitimate immigration enforcement role. A man from Myanmar with no work permit said, "Whenever the immigration [RELA] is involved, they take you to see if they can get any money. I was caught four times. The employer bailed me out each time." A coworker of his, also without a work permit, had a similar account. "I was caught one time. The boss paid the money; it was a bribe that he had to pay."

Some told Amnesty International that their UNHCR cards had protected them from arrest by RELA agents. More frequently, however, RELA agents ignored these documents. For instance, a 33-year-old man from Myanmar with a UNHCR card told us:

RELA have told other friends of mine that although they held a refugee card from UNHCR, they still should not be working. A friend of mine was just arrested last month while working in a restaurant in Kepong. She was a UNHCR cardholder. She was told that she could not work and was then arrested and locked up. She had to pay the police 300 ringgit [\$87] before they agreed to release her.

Migrant workers reported numerous instances in which employers were induced to pay bribes to secure their workers' release. In many instances, the workers did not know how much their employers had paid. But Santos said that after he was arrested in a 2008 raid, his employer told him that the employer had paid a 5,000 ringgit bribe (\$1,460) for each of three workers detained in the raid.

"The volunteers cast a wide net as they stop and search people who look like Asian foreigners," a *New York Times* article observed in December 2007.⁵⁸ RELA's indiscriminate approach to its roundups means that its agents detain many individuals who have a legal right to be in Malaysia. For example, Ramos, a 25-year-old from Timor-Leste, described an incident involving another worker:

One of our co-workers, a Nepali man, recently had some problems with RELA. He was arrested about four months ago despite having legal documents. He was holding a photocopy of his passport because our employer holds our original documents. He still told the arresting officers that he had valid documents and not to arrest him, but they did not listen. He was then taken to a lock-up and then to a detention camp. He said that he was given very little food while in detention. He was released three days later after our employer went and got him released. It took our employer three days to release him because our employer could not find him right away. Our employer went to Tanah Rata detention camp and then finally to Langkap, where he found the worker.

Immigration officials assured Amnesty International that a new directive issued shortly before our visit in July 2009 had withdrawn RELA's role in immigration enforcement. "We are no longer giving that power to RELA," said the Director General of Immigration. "We are not involving RELA with regard to operational matters, enforcement matters."⁵⁹

After this directive was said to have taken effect, Amnesty International observed and photographed RELA agents participating in a large-scale immigration roundup in central Kuala Lumpur in July 2009. RELA agents were also still staffing one of three cellblocks at the KLIA Immigration Depot when Amnesty International inspected it at the end of July

2009. When Amnesty International raised this fact with immigration officials, they explained that the new directive was still being implemented. “We took away about 50 percent of their [immigration] duties on the 1st of July. We will take away the other 50 percent on the 1st of August,” one official assured Amnesty International.

Despite these assurances, news accounts reported that RELA’s involvement in immigration raids continued after August 2009.⁶⁰ In late January 2010, in a move that suggested that RELA would continue to play key role in immigration enforcement, the Immigration Department announced plans to carry out nationwide enforcement operations in cooperation with the police and RELA in response to reports that some 40,000 Indian nationals had failed to depart Malaysia after entering on tourist visas.⁶¹

5. MALAYSIA'S PROTECTION GAP

“What are the real consequences? You have a highly exploitative system established, where the employer knows you can leave but you're not going to win.”

—Dr. Irene Fernandez, director, Tenaganita, a non-governmental organisation in Malaysia that works on behalf of migrant workers, interviewed in Kuala Lumpur on 10 July 2009

In principle, migrant workers are covered by the employment laws generally applicable in Malaysia. In practice, however, the lack of effective enforcement and migrant workers' dependence on their employers and recruitment agents means that they have few or no safeguards against abuse.

In violation of the rights to freedom from discrimination and equality before the law, domestic workers are not covered by most of the safeguards in Malaysian labour laws. There is no limit on the number of hours they may be asked to work in a day. They are not entitled to overtime pay or a minimum number of days off each week or month. And they are not covered by laws governing workers' compensation.

The Ministry of Human Resources, which oversees workplace inspections, has only 240 labour inspectors to cover more than half a million places of work in Malaysia's 14 states. Moreover, the number of workplace inspections fell significantly from 2006 to 2008, according to ministry statistics.

Workers who raise individual administrative claims before the Labour Department and the Industrial Relations Department face barriers in practice. The most significant of these is that their employers may immediately cancel their work permits, meaning that they can no longer work lawfully and lose their right to remain in the country. Administrative cases take many months or even years to be resolved. If they are resolved in the worker's favour, there is no guarantee that the worker will actually receive any compensation, as Amnesty International found from the case files examined.

LAWS AND POLICIES GOVERNING THE EMPLOYMENT OF MIGRANT WORKERS

Under Malaysia's employment laws, most manual labourers and other workers who earn less than 1,500 ringgit (\$435) per month—but not domestic workers—are entitled to the

following minimum conditions of employment:

- Overtime pay after eight hours per day or 48 hours per week.⁶²
- No more than 12 hours of work in a single day and a limit on overtime of 104 hours per month, except in cases of accidents and other emergencies.⁶³
- A 30-minute rest period after five hours of work. If an employee's work must be carried out continuously, the employee may be required to work eight consecutive hours, but that eight-hour period must include breaks totalling 45 minutes and must include the opportunity to have a meal.⁶⁴
- One day off each week, although employees may be required to work in cases of accidents and other emergencies.⁶⁵
- Twelve paid holidays each year.⁶⁶
- Paid annual leave of at least eight days or payment in lieu of leave if the employee has worked a full year, pro rated if the employee has worked less than 12 months during the year.⁶⁷
- Paid sick leave of at least 14 days each calendar year.⁶⁸

In addition to these general protections, plantation workers are entitled to a minimum of 24 days' work each month.⁶⁹ Because Malaysia is a party to the Weekly Rest (Industry) Convention, 1921, workers employed in any "industrial undertaking," a term that includes construction and manufacturing, are entitled to "in every period of seven days a period of rest comprising at least twenty-four consecutive hours."⁷⁰

There is no minimum wage for most workers in Malaysia, whether they are local or foreign.⁷¹ As a party to the Protection of Wages Convention, Malaysia is obligated to protect workers against unreasonable deductions from wages.⁷²

Virtually all migrant workers' contracts contain express provisions that purport to bar them from joining trade unions, in violation of international law.⁷³ A contract examined by Amnesty International contained the following provision, typical of those Amnesty International saw: "[T]he employee . . . shall not participate in any political activities of those connected with Trade Union in Malaysia." Nevertheless, all workers are entitled by law to join trade unions—such contractual terms are void as a matter of law.⁷⁴

Malaysia's employment laws also require that contracts of over one month must be in writing,⁷⁵ and every employee must receive, before employment and then on any change in the conditions of employment, the details of the terms and conditions of his or her employment.⁷⁶ Employers must also provide their workers with statements of the wages they have earned during each pay period⁷⁷ and must not ordinarily give advances on wages that are greater than the amount the worker would earn in a month.⁷⁸ Foreign workers must be paid the same as local workers who are doing the same job.⁷⁹ These requirements apply to domestic work, as well as other manual labour and any other work for which workers receive less than 1,500 ringgit per month.

The law requires a minimum notice period of four weeks for termination of the contract, and longer periods if the worker has been employed for two years or more, unless the contract provides otherwise.⁸⁰ For domestic workers, however, the law provides for a notice period of 14 days or the payment of a sum equal to 14 days' wages.⁸¹

The law providing for workers' compensation covers foreign workers on the same basis as local workers. Under the law, employers are responsible for the expenses of treatment and rehabilitation for workplace injuries. In most cases they must also compensate their workers for workplace injuries.⁸² Employers must have insurance to cover these potential liabilities, including an insurance policy for their foreign workers under the Foreign Workers' Compensation Scheme.⁸³ Such insurance is compulsory, and insurance certificates must be produced to renew workers' visas, officials with the Ministry of Human Resources told Amnesty International. Domestic workers are not covered by the law governing workers' compensation.⁸⁴

Beginning in April 2009, employers were expected to pay levies themselves rather than passing those costs on to their workers, according to the Ministry of Human Resources. "If the employer deducts for the levy, the worker can report it to the Labour Department," one ministry official told Amnesty International. In practice, however, the prospect of redress for this violation or any other is remote, as described below in the Individual Complaints section.

DISCRIMINATION AGAINST DOMESTIC WORKERS

Domestic workers, whether Malaysian or foreign, are not covered by most of the protections of Malaysia's labour laws.⁸⁵ When Amnesty International asked why not, one government official, emphasizing that he was giving his personal views rather than the position of the government, said, "Here we don't treat them as workers. We treat them as part of the family. We consider them an extension of us, and we treat them with the utmost respect."

The isolated nature of domestic work creates particular risks of abuse of all kinds. Domestic workers work and usually live in their employers' homes, often without access to potential sources of support. Domestic workers in Malaysia told Amnesty International that they were slapped, had their hair pulled, made to squat for long periods of time, and subjected to other violence, verbal abuse and other humiliating treatment. Some were sexually assaulted.

The exclusion of domestic work from many of the safeguards of the labour laws denies domestic workers equality before the law.⁸⁶ It also means that a form of work that is generally performed by women and girls receives less protection than other types of labour.

No compelling justification exists for the exclusion of domestic work from the labour laws—in fact, the alarming prevalence of egregious abuses against domestic workers compels the conclusion that this form of labour requires more protection rather than less. The exclusion of domestic workers from most labour law protections therefore violates the right to freedom from discrimination, and in particular the right to equal remuneration, including benefits, and equal treatment for work of equal value and the right to protection of health and safety in working conditions.⁸⁷

THE LACK OF REDRESS

Workers' accounts demonstrate that each one of the protections set forth in the labour laws is routinely violated. These abuses go unchecked in large part because of the weakness of

Malaysia's systems to prevent labour violations and to provide redress when they do occur. The number of workplace inspections has decreased substantially in recent years. Individual complaints can take years to resolve, and employers may cancel workers' permits as soon as they file a complaint. When workers' permits are cancelled, they can no longer work lawfully, and they lose their right to remain in Malaysia unless they obtain special passes, issued in one-month intervals at a cost of 100 ringgit (\$29).

WORKPLACE INSPECTIONS

The Ministry of Human Resources is responsible for inspecting conditions in factories and other workplaces. There are a total of 240 labour inspectors in 14 regional offices, one for each state, to cover more than 500,000 places of work, officials with the Ministry of Human Resources told Amnesty International.

The number of reported workplace inspections by the Ministry of Human Resources significantly declined in 2008, as compared with inspections conducted in 2006 and 2007. In the agriculture, hunting and forestry sector, for example, workplace inspections declined over 80 percent from 2007 to 2008—the ministry conducted 5,665 workplace inspections in 2006 and 6,995 in 2007 but only 1,356 in 2008. Inspections in the manufacturing sector declined by 45 percent from 2006 to 2007 and by 78 percent from 2007 to 2008, with the number of inspections falling from 8,370 in 2006 to 4,639 in 2007 to 1,015 in 2008. In the construction sector, the ministry conducted only 457 inspections in 2008 as compared with 3,770 in 2007, an 88 percent decline. And the ministry inspected just 12 “private households with employed persons” in 2008, a 99.9 percent decline from its reported 2007 total of 9,224.⁸⁸

As a party to the Labour Inspection Convention, Malaysia is obligated to “maintain a system of labour inspection in industrial workplaces.”⁸⁹ While that treaty is limited to industrial places of employment, it sets forth principles on the functions of a labour inspection system that are broadly applicable to every type of work—the enforcement of laws “relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters”; the provision of technical information and advice for employers on compliance with the law; and the duty “to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.”⁹⁰ Under the principle of due diligence, the state must take reasonable measures to ensure safe and healthy working conditions and compliance with other labour laws in all sectors of employment.

INDIVIDUAL CLAIMS

Workers may raise claims against their employers through either of two administrative processes, one before the Labour Department and the other through the Industrial Relations Department. They may also bring a civil suit against their employer for breach of contract, but in practice litigation in the civil courts is an expensive and time-consuming undertaking that workers are unlikely to employ.

The Labour Department receives complaints (termed “representations” by the relevant legislation) in cases where workers claim wrongful deductions, unpaid wages, or unpaid compensation in the event of workplace injuries. If negotiation between the parties does not settle the matter, the Labour Department may refer the case to the Labour Court.

The separate process overseen by the Industrial Relations Department receives complaints of unfair dismissal. As with the procedures involving the Labour Department, the Industrial Relations Department first attempts to negotiate with the parties; if the matter is not resolved by negotiation, the department may refer the case to the Industrial Court.

There is necessarily some overlap between these two procedures. Whichever procedure migrant workers employ, in practice they face barriers to redress.

Amnesty International heard that some workers whose work permits are found to be false have their cases dismissed by the Industrial Relations Department. The Labour Department does accept cases in such circumstances, but the workers must be able to prove that they worked in the company. If they have no pay slips, they often cannot establish their work.

In one such case, 75 Bangladeshi workers came to Malaysia in March 2007 after they were promised work as cleaners in an electronics factory. A group of the men stated in a police complaint: “We 18 Bangladeshi guys came to Malaysia at the date of 3rd of March 2007, we came here under [employer’s name redacted]. . . . Three months they did not give us job.”⁹¹

After three months without work, some of the workers received work as welder assistants with a different company. They were paid much less than they had originally been promised, and their new employer did not give them work continuously. They wrote in the police complaint:

[O]ur salary [should be] RM 988.00 (10 hours duty), per day salary is RM 38 but the company give us just RM 20 per day. They also cut RM 7.50 (levy and lunch hour). So we only got RM 12.50 per day. Also they cut our house rent. House rent RM 400 but they cut RM 800. If we complaint against them they will beat us and black mail us to send back home. Now we realised we been cheated by agent and that company. We lodged this report to refer our embassy and Labour Department for our justice.⁹²

The original employer held their passports and refused to return them to the workers. When they filed a complaint and a police report against their employer in February 2008, they learned that their work permits were fake. All but six of the workers elected to return to Bangladesh; the six stayed to pursue a claim in the Industrial Court against the original employer, which was still pending at this writing.

In some cases, employers are able to present documents purporting to show that workers have been properly paid. “Many workers have to sign a document when they receive money, sometimes a blank page,” a trade union representative told Amnesty International. When the workers try to bring their complaints to the Labour Department, he said, the employer produces the document with the worker’s signature.

It is not unlawful for an employer to cancel workers’ permits as soon as they file a complaint. When their permits are cancelled, they can no longer work lawfully, and they lose their right

to remain in the country. They are immediately vulnerable to arrest, imprisonment, fines and deportation.

Migrant workers whose employers cancel their permits may apply for a special pass to allow them to remain in Malaysia. If it is granted—the decision to do so is discretionary—the worker may remain in the country for one month. The fee for the special pass is 100 ringgit (\$29). “If they say, ‘We have a case in the Labour Court, and we’re supposed to appear before the judge,’ we will extend their stay until the court date. If the hearing is postponed, we will extend the stay. We go along with the advice of the court and the police. The workers have to pay the fee of 100 ringgit for the special pass, which is valid for one month maximum,” a senior immigration official told Amnesty International.

In general, special passes are only granted for a maximum of three months. “If the case is pending in the Labour Court, Immigration gives a three-month window. The Labour Department will have to write to Immigration to extend,” the Secretary General of the Ministry of Human Resources told Amnesty International.⁹³

The Secretary General of the Ministry of Home Affairs assured Amnesty International that special passes would continue to be granted beyond the three-month limit if a worker wanted to stay to pursue a case. “As long as the case is filed, they can stay here. We keep on extending their stay,” he said.⁹⁴

Special passes do not authorise employment, meaning that a pass holder who works does so illegally. When Amnesty International asked immigration officials if a migrant worker on a special pass could work while his or her case is pending, one replied, “According to the law they cannot, but more often than not we shut our eyes,” saying that immigration officers often ignored such technical violations for humanitarian reasons.

In addition to the requirement that workers apply every month, at a cost of 100 ringgit per special pass, Amnesty International also heard from immigration officials that in practice they did not extend special passes after seven or eight months. “We believe they have exhausted their legal avenues within six months,” one official explained. Another official added, “After three months, we encourage them to go back and wait in their home country. They have more chances in terms of money there.”

Amnesty International asked officials at the Ministry of Human Resources how long labour and industrial relations typically take to conclude. “All cases involving foreign workers are priority. We try to resolve those cases in one month. In most cases, we manage to settle within three months,” an official with the Ministry of Human Resources said.

Fifty-five Bangladeshi workers paid their agent 230,000 taka (\$3,340) each to travel from Bangladesh in July 2007 to take jobs as factory workers in the manufacturing sector.

Their contract specified that they would receive a minimum of three to four hours of overtime at 1.5 times their basic salary of 18.50 ringgit (\$5.40) per day for eight hours of work, double time for work on Sundays, triple time for work on public holidays, and a “[m]inimum monthly gross salary not less than RM 750.00,” or \$220. One of the workers explained in a police report what the company’s actual practice was:

We were forced to work on Sundays . . . which by right is our off day. We would have to work although our names were not present on the duty roster they had. We had to work even after [regular] working hour[s] and we were not allowed to punch the punch card and we were not not paid salary for that work.

We were under constant threat. Sometimes after working for 15 hours, the [overseers] would come into the hostel and intimidate us by using stick of wood or plastic about 3 feet to continue work. I was hit on the head with a hammer for working slowly. [I] was not brought to hospital nor was there any action taken.

The men reported the abuse to the police, who took them and their employer to the police station. The worker continued his account, saying:

There we explained the problem to the police. We were not given our passports since the day we arrived in Malaysia. The police told our boss to give us our passports back. He claimed that he did not bring the passports, and he would return the passports to us when the Bangladesh agent comes over. Upon hearing that, the police allowed our boss to take us home. Later, the boss tied up our workers’ hands and feet and beat us up.

In September 2007, when conditions at the workplace had not improved, the workers’ agent promised to find them work elsewhere. The agent arranged housing for them for two days. At the end of that time, he asked them to return to their employer. The police report continues:

He also assured that everything will be much fine. The workers complied.

They were punished instead. The workers were locked in a container for a night. The next morning, the workers were not allowed to work nor leave the compound of the factory. Then, they were thrown out the factory in the heavy rain.⁹⁵

Their employer had submitted an affidavit as part of the recruiting process in which it promised to “pay the salaries of the workers for the rest of the contractual period if they are terminated prior to the contractual period for any reasons other than health and disciplinary ground” and further agreed not to “cancel the work permit of any worker if he lodges any complaint with relevant Malaysia authority pertaining to his rights and privileges until the matter is settled by the authority concerned.” Nevertheless, in October 2007, they learned that their work permits had been cancelled. The workers received their passports but no return tickets from their employers. They filed a case against their employer in the Industrial Court.

Nevertheless, lawyers who represent workers in such cases told us that they generally take many months or even years to be resolved. Staff of the nongovernmental organisation Tenaganita told us that it took a minimum of six months and up to two years or more for cases to progress in the labour courts.⁹⁶

Indeed, most of the cases Amnesty International examined had been pending for more than six months with no resolution. In one case, for instance, 21 Bangladeshi workers travelled to Malaysia in September 2007 after their Bangladeshi recruitment agent promised them construction work. When they arrived, they were taken to work on a plantation in Ipoh. After they complained, their agent promised to transfer them to construction work within three months. They were promised a minimum monthly gross salary of 700 ringgit (\$205) per month, but their work on the plantation earned them between 250 and 400 ringgit (\$73 to \$115) per month. They stopped work in May 2008, made a complaint with the police, and filed a case with the Labour Department. Their labour case was still pending at the end of 2009.

Several cases reviewed by Amnesty International were resolved, but only after one or two years. For example, an Indonesian domestic worker filed a claim in August 2007 for 11,760 ringgit (\$3,430) in unpaid wages; two years later, in July 2009, the court found in her favour.

It is technically possible for a worker to pursue a labour or industrial relations case from abroad, but the lawyers Amnesty International spoke to did not regard it as practical to do so.

And if workers win orders of back pay or other compensation, they may need to go to civil court to have those orders enforced if the employer refuses to pay. "We don't deny, in some cases employers have gone through bankruptcy, it can take time to get money back from the companies," a senior official with the Ministry of Human Resources told Amnesty International. In most cases, he said, "We can enforce the order through the civil courts. We will register the judgement and take the employer to a debt collection procedure to enforce our order. The laws are there. Whatever needs to be done will be done except where the companies close and are no longer there. We will follow the rule of law."

The process is burdensome enough that some workers give up their rights to pursue claims even if their cases are compelling. In one case Amnesty International examined, for example, 62 workers came to Malaysia from Bangladesh in July 2007 and began work laying power cables. Each worker was given only a food allowance of 200 ringgit (\$58) for three months of work and 550 ringgit (\$160) for a fourth month of work. They had worked from 8am to 8pm with a one-hour break during this time except for a 12-day period during which they worked from 8am to 5am the next day to meet a deadline. From November 2007 to March 2008, they received no pay and only one month's food allowance of 200 ringgit. When they asked for their salary, the project manager said that he had no money to pay them. The next day, five men assaulted 25 of the workers. The project manager then said that he could no longer employ the workers because they did not have the skills necessary to do the job. After he agreed to transfer the workers to an outsourcing company, he told them that he would only surrender their passports if they agreed not to file a case with the Labour Department. The workers agreed to this demand.

In several other cases, domestic workers returned to Indonesia without the back wages ordered by the court after their employers refused to pay. A domestic worker in one such case filed a claim for 28,140 ringgit (\$8,205) in unpaid wages. Her employer agreed in July 2008 to pay the amount due in two instalments but had not begun payment by July 2009, when the woman returned to Indonesia, effectively forfeiting her claim.

Some workers had settled their claims for a fraction of the amounts they were actually owed. Others had remained in Malaysia waiting for court-ordered payment for six months or more when Amnesty International reviewed their cases.

6. THE CRIMINALISATION OF MIGRATION

Malaysia could not function without migrant labour. But instead of protecting migrant workers, much of Malaysia's approach to migration is effectively to criminalise it. Malaysia imposes severe and excessive criminal penalties on workers for technical immigration offences such as working with an expired permit, even when the violation is due to the employer's failure to file on time.

Losing legal status is all too easy, and many workers become undocumented through no fault of their own when their employers fail to renew their permits. In some cases documented by Amnesty International, workers who complain to the authorities about mistreatment have been themselves arrested for technical violations of the immigration laws.

Those who are arrested are placed in immigration detention centres under conditions that fall far short of minimum international standards.

STUNT POLITICS AND MORAL BLINDERS

Some immigration enforcement operations are little more than stunt politics. Large-scale, public roundups in markets and on city streets seem calculated to demonstrate to the general population that the government is acting to control illegal migration. Others are simply discriminatory. Indiscriminate, warrantless raids on private residences in poorer parts of cities, sometimes in the early hours of the morning, sends a strong message to migrant communities that being poor and foreign is automatically suspicious. It is not clear how effective these operations are in controlling irregular migration. What is clear is that they often lead to arbitrary arrests.

There are also frequent reports of violence and serious injuries during such operations, particularly when raids are carried out by RELA.⁹⁷ And, as Chapter 4 demonstrates, immigration enforcement offers considerable opportunity for extortion.

In some instances, workers who attempt to report misconduct by their employers are themselves arrested. Sujata said, "I came to Malaysia to work as a maid in June 2007. The agent who brought me here made me work in different houses and did not pay me any money. . . . I went to an immigration office to report the agent but was arrested instead." She served a four-month sentence in the Kajang women's prison and was then transferred to the Lenggeng Immigration Depot to await deportation to India.

Her story is not unusual. Tazmeen, a 45-year-old woman from Andhra Pradesh, India, gave a similar account, saying that her agent did not pay her for three months of domestic work and instead beat her. "I was very upset and went to the police station to report my agent. The police arrested me instead." She had completed a three-month prison sentence and had

been transferred to Lenggeng two weeks before Amnesty International spoke with her in July 2009.

Such responses by authorities are symptomatic of official policies that presume wrongdoing on the part of migrants and emphasise enforcement of technical violations at the expense of seeing justice done. “The high degree of discretion and the broad power to detain accorded to immigration and other law enforcement officials can give rise to abuses and to human rights violations. The failure to provide legal criteria can result in de facto discriminatory patterns of arrest and deportation of irregular migrants,” the UN special rapporteur on the human rights of migrants observed in 2003.⁹⁸

ILLEGAL ENTRY AND OTHER IMMIGRATION OFFENCES

Entering and staying in Malaysia without a permit (illegal entry) is punishable with a fine of up to 10,000 ringgit (\$2,915), imprisonment of up to five years and, beginning in 2002, “whipping [caning] of not more than six strokes.”⁹⁹ The same punishment, including caning, applies to those who unlawfully enter or reside in Malaysia after they have been deported.¹⁰⁰

Remaining in Malaysia after the expiration of an entry permit (overstaying a visa) is punishable by a fine and imprisonment on the same terms as illegal entry—up to 10,000 ringgit and five years—but those who overstay their entry permits are not, under the law, subject to caning.¹⁰¹ The same punishment applies to those who enter or depart Malaysia other than at an authorised immigration control post.¹⁰²

Workers’ permits are automatically revoked when they violate a condition of entry—for example, by changing employers. Workers also lose work status when their employers fail to obtain or renew proper work permits for them.

In such cases, they have overstayed their visas and cannot leave the country without a check-out memo. A senior immigration enforcement official told Amnesty International that the government issued check-out memos as long as workers offered a good reason for staying beyond the time granted to them. “As long as we can agree, if I can be convinced, I will let you go,” he said. The government will impose a fine in all cases, he said. “My government has asked me to impose the minimum of 400 ringgit [\$115].” He explained, “Over eight months or one year, that person is working. I have missed the opportunity to collect the levy. If the person is working in the service sector, that’s 1,800 ringgit [\$525]. They’ve worked throughout their stay, so I have to impose the minimum.”

The Malaysian constitution provides that those who are arrested must be brought before a magistrate within 24 hours or released. But that guarantee does not apply to non-citizens who are arrested for immigration violations, who may be held for up to 14 days before being brought before a magistrate.¹⁰³

The UN Working Group on Arbitrary Detention has concluded that “criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention.”¹⁰⁴

CANING AND OTHER SENTENCES

As noted above, illegal entry and re-entry after deportation are punishable by caning; overstaying a visa is not. Amnesty International identified cases in which those who overstayed visas were nonetheless sentenced to caning and subjected to that punishment. Documented workers whose passports are withheld by their employers, asylum seekers and refugees are also at risk of caning.¹⁰⁵

Those who unlawfully bring a person to Malaysia, harbour a person who has violated the immigration laws, forge identity documents and in some cases employ a person without a valid work permit are also punishable by caning, which is mandatory in some circumstances.¹⁰⁶ Caning is not only used in Malaysia for immigration offences; it is a supplementary punishment for approximately 40 other crimes.¹⁰⁷

In response to a Parliamentary question, the government revealed that 47,914 foreigners were convicted between 2002 and 2008 of crimes for which caning could be imposed. Of that total, 34,923 were actually caned. The remaining 12,991 were not caned because they were women (two-thirds of those not caned) or men over the age of 50. About 60 per cent of those caned were Indonesian, 14 per cent Filipino, and 14 per cent Burmese.¹⁰⁸

Those who are convicted of illegal entry are normally caned up to three times, although the law allows for them to be caned up to six times. The cane cuts through the skin and leaves scars that are visible months later. When Amnesty International spoke with immigration detainees who had been caned, several told us that they did not receive treatment after the sentence was carried out.

A 22-year-old man from Myanmar described the punishment and the effect it had on him:

Before I was whipped, I was given a medical check-up. They took down my details and then removed all my clothing except for a small piece of cloth to cover my penis. It was like a trouser but with the buttocks area cut off. I was then tied up. I was hit once very hard with a cane. It cut my skin and hurt very much. There was blood. I could not wear any proper clothing for five days after the caning because of the pain and because it stuck to my cut. I still have nightmares about it. I cannot bear thinking about it. I am very afraid that I may be whipped again if caught.

These sentences are passed after summary hearings in Special Immigration Courts. When Amnesty International observed proceedings in the Semenyih immigration court, three detainees heard the charges against them, pleaded guilty and received sentences—including one sentence of caning—in a matter of minutes. None had a lawyer, and the judge did not say whether they could request legal assistance. Nor did they have the opportunity to speak for themselves in court—a court official known as an interpreter, although his function was more that of a court clerk, spoke to each detainee and then relayed the detainee's plea and request for leniency to the judge. The judge did not notify the detainees that they had the right to appeal the convictions.¹⁰⁹

In one case reported in the media and confirmed by Amnesty International, an immigration detainee told his lawyer that he had been caned in November 2009 even though he had filed an appeal and his case was not set to be reviewed until 22 February 2010.¹¹⁰

The imposition of caning contravenes the prohibition on torture and other forms of cruel, inhuman and degrading punishment, in violation of Malaysia's obligations under international law.¹¹¹ When caning and other sentences are imposed after summary proceedings that lack elements of a fair trial, including the right to legal counsel, adequate time to prepare one's defence, and the right to appeal, the right to a fair and public hearing is violated.¹¹²

DETENTION IN DEPLORABLE CONDITIONS

Amnesty International inspected three immigration detention facilities—the Kuala Lumpur International Airport Immigration Depot, Lenggeng Immigration Depot, and Semenyih Immigration Depot. Conditions in each fell far short of minimum international standards for places of detention.¹¹³

These facilities are extremely overcrowded. They fail in fundamental ways to meet basic international standards and generally accepted good practice in the treatment of detainees and the management of institutions. Detainees in immigration centres lack bedding, regular access to clean water, medication and sufficient food. They spend most of their time in their cells with no opportunities for exercise, organised worship or other activities. Diseases spread quickly, and fights are common. Detainees under age 18 are held together with adults, in violation of international law.

In a typical account, Ghulam, a 33-year-old man from Bangladesh held in Lenggeng, described what his life was like in immigration detention:

I have been here for the past 10 months, and it has been very hard. There is very little food. We only get a little bread in the morning with some black tea. For lunch and in the evening, we get a little white rice and a small piece of dried fish. There are no vegetables or fruit, and the food portions are too small. I am often hungry and have gastric problems because I am always hungry. There are insects that are always biting me, so much that my skin is always itchy and I am sick. The drinking water is also very dirty and not clear. The officers here are also violent. . . . Three months ago, I saw a Pakistani man being taken away while being beaten badly.

The Semenyih Immigration Depot is one of the largest immigration detention centres in Malaysia, with a capacity of 1,250 detainees but in practice holding up to 1,500. Opened in 1992, it was managed by the police until 2002 and then by the Prison Department until the beginning of 2008. At the time of Amnesty International's visit in July 2009, the facility had been closed for 23 days for renovations after a protest by detainees; many had been transferred to the KLIA Immigration Depot.

The Lenggeng Immigration Depot has a capacity of 1,250, including 250 women. It held a total of 1,339 on the day of Amnesty International's visit, 1,135 men and 204 women. Many of its buildings were constructed in the 1970s. Men are housed in four cellblocks, each

holding close to 300 detainees. Women are housed in a separate section of the detention centre, with most in a two-story dormitory. Women held along with children under the age of five are housed in a separate dormitory—really a large cage—with no activities for their children.



The Lenggang Immigration Depot has a separate dormitory for women with young children, but it is little more than a large caged-in area. © Amnesty International (Photo: Vinod Ravindranathan).

The KLIA Immigration Depot has three blocks, each of which is divided into four large cells. One block held new arrivals and, in a separate cell, those designated as deportees. The detainees transferred from Semenyih had been placed in seven cells in the two other blocks. These cells were particularly crowded, with some holding more than 120 detainees. The cells that held recent arrivals were also very crowded; one held 85 detainees and the other housed 100. Each block also had separate individual cells that authorities said was used for those with health or disciplinary problems. In all, the facility held 1,175 detainees on the day of our visit, more than its capacity of 1,000.

Thirteen such detention centres, or depots, operate in Malaysia and have a combined capacity of 13,000, though they often house more, officials with the Ministry of Home Affairs told Amnesty International.

Both the Lenggeng and KLIA depots held more detainees than the facilities' official capacity. But the number in excess of official capacity—89 in Lenggeng, 175 in the KLIA depot—do not convey the true picture of overcrowding in those facilities. Detainees told Amnesty International that it was difficult to find enough space to sleep stretched out. It is likely, then, that international standards would not be met even if these facilities held no more than their official capacity.¹¹⁴

In each of the three facilities Amnesty International visited, almost none of the detainees had blankets or mattresses; most slept on bare wooden or concrete floors. "Every night we sleep on the concrete—no blanket, no mattress," said Ernesto, a Filipino detainee held in Lenggeng. "We cannot afford blankets for all," a guard at Semenyih explained. "It's first come, first served." Showing us the pavilions where the men had been housed before their transfer to other facilities, another guard observed, "Three hundred people were inside here. It was very uncomfortable. . . . They just had cardboard to sleep on because our government did not provide enough bedding to this depot."

Skin diseases are common. Many detainees showed Amnesty International rashes on their arms and legs. "Everyone has skin disease, all people; we cannot get any soap," said John, a 33-year-old man held in the KLIA Immigration Depot. Others described severe itching, an indication of scabies, bedbugs or other parasites. "I have rashes all over the body. And there are blood suckers in the wood [floor], where we sleep. We sleep on the wood," said Michael, a Liberian man held in Lenggeng. "There are insects that get on our bodies," said José, also in Lenggeng, adding that rats ran over them while they slept.

Detainees in all three facilities repeatedly told Amnesty International that the water was not clean; many said that they had gotten ill after drinking it. "I was sick with diarrhea from the water," Qabilah told us. Although every cellblock had unrestricted access to ablution areas with water taps, Amnesty International heard that the water supply was at times intermittent.

In such circumstances, detainees reported that it was very difficult to maintain personal hygiene. Indeed, Amnesty International heard from many detainees that they were not provided with soap. And women told us that their access to sanitary pads was limited. "Sometimes they give sanitary pads, but just one," said Evelyn, telling us that detainees had to buy additional pads if they wanted more.

Nearly every detainee complained about the amount and the quality of the food. "Everybody here is very weak. . . . The food is not enough," Dawid, held in the KLIA depot, told us. "Not enough for everyone, sometimes we only get half the amount as normal," Evelyn said of the Semenyih detention centre.

Every detention centre had some provision for medical care for detainees who fell ill. The staff of each facility includes medical personnel, although they generally only work part of the day and only some days of the week. Serious cases are transferred to nearby hospitals, detention centre staff told Amnesty International. Nevertheless, many detainees reported that

they do not usually receive care when they are sick. Iskandar, a 30-year-old man from Bangladesh who was detained in Lenggeng, told us, “The officers do not give us any medicines when sick, and many are ill. Many are coughing all the time and feel very itchy.” A guard at Semenyih explained the approach he and his colleagues took, saying, “If they are sick, we give them a Panadol [a pain killer]. If that doesn’t work, we send them to the hospital.”

Overcrowding, poor hygiene and sanitation, and irregular access to treatment mean that serious illnesses can spread quickly. The Malaysian human rights group SUARAM documented at least ten deaths in immigration detention centres in 2009 due to outbreaks of leptospirosis and other diseases.¹¹⁵



“Water supply disrupted,” advised a sign at the entrance to one wing at the Semenyih Immigration Depot. © 2010 Amnesty International (Photo: Vinod Ravindranathan).

These inhuman and insalubrious conditions are exacerbated by the limited opportunity detainees in the KLIA and Semenyih depots have to exercise or even to leave their cells. “We stay inside the whole time, stay in the block,” said Mairo, a Nigerian woman held in Semenyih. Similarly, detainees in the KLIA depot told us that they rarely go outside; they

only see the sun through a small opening in a concrete wall. “No exercise, no sunshine,” Osaze complained.

Detention officials gave different accounts. At the KLIA depot, for example, a guard told us that detainees were allowed outside for 30 minutes. He conceded that they did not go outside every day, but he estimated that they were allowed out of the cell block three or four times each week.

Detainees in Lenggeng could move freely within the small enclosures that surrounded each cellblock, but their numbers were so great and the air inside their cellblocks so fetid that they simply stood shoulder to shoulder in the limited outdoor areas available to them.

Conditions are worse for detainees held in the small single cells used for those who committed disciplinary infractions. Detainees are locked in these windowless cells almost 24 hours a day and isolated from nearly all contact with others.

Detention officials did not clearly explain what behaviour could lead to placement in these cells, nor did they provide Amnesty International with a list of disciplinary infractions. In some cases, it was clear that detainees were housed in these cells because they suffered from mental illness that made it difficult for them to adjust to life in detention.

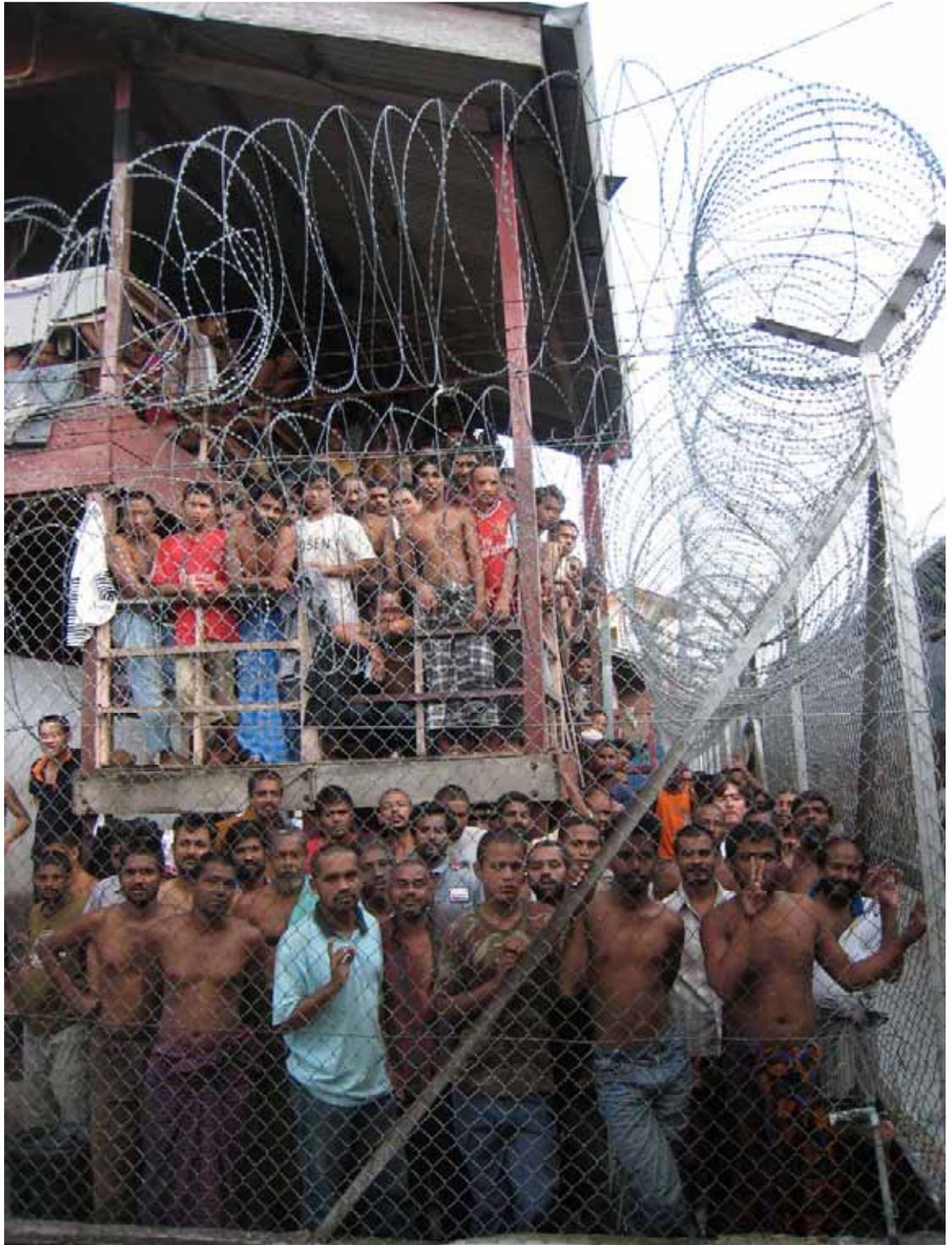
Detainees were able to describe to Amnesty International some of the infractions that could lead to placement in these punishment cells. For example, women detained in Semenyih told us that the group was frequently ordered to squat in formation for extended periods. “They call us to sit, five times a day, 20 minutes,” said Manny, who had spent four months in Semenyih. Those who do not do so spend the night in lockup, Mairo and Manny reported from personal experience.

Complaints can also result in lockup. “Last week I complained. They took me to the lockup—the holding cell—for three days. No blanket, no food,” said Qabilah.

Amnesty International heard some reports of violence by guards, particularly as punishment when detainees themselves committed acts of violence. “One week ago there was a fight. The guards hit everybody,” said Kundan, a detainee in Lenggeng.

And some detainees said that guards had responded to their complaints with physical abuse. When Manny complained about restrictions on the personal items she was allowed to keep when she was placed in immigration detention, one of the immigration agents hit her, she said. “He started to hit me with his hand . . . He tied my hand and brought me to lockup. He pulled my hair, then again started to beat [kick] me with his leg.”

Amnesty International also heard some reports of sexual abuse by guards against female detainees. “At KLIA, some immigration people would touch breasts of girls, and buttocks. They gave the girls money for it,” reported Qabilah.



Detainees at the Lenggeng Immigration Depot. © 2010 Amnesty International (Photo: Vinod Ravindranathan).



Women, some with young children, held in the Semenyih Immigration Depot. © 2010 Amnesty International.

Women with young children are held in a special dormitory in Lenggeng, which also housed pregnant women. The special dormitory had only slightly better conditions than those for women without children—it had bedding and a few toys, but otherwise there was very little to distinguish it from the rest of the women's detention area. In Semenyih, women with young children are held in the same cellblock as the rest of the women.

Amnesty International spoke to several teenagers who were held with the general adult population. For instance, Amnesty International delegates spoke to a 15-year-old boy from Myanmar who had been held in the KLIA Immigration Depot for six months. Amnesty International saw a 17-year-old boy, also from Myanmar, in another KLIA Immigration Depot block. In Lenggeng, Amnesty International saw a 15-year-old and a 16-year-old. International law flatly prohibits the detention of children under the age of 18 with adults.¹¹⁶

Detention officials told Amnesty International that detainees can receive visits, but they rarely do so. Their main contact with the outside world is by telephone, but many detainees complained that they could only place calls irregularly. Some said that calls were limited to two minutes each. Others reported that calls were expensive. "Phone calls cost 30 ringgit," Ernesto reported. "If you don't have money, you can't make a phone call."

In a positive development, RELA, which had been charged with the control of immigration detention centres starting in 2008, no longer had that role after mid-2009. Immigration officials told Amnesty International that the new directive removing RELA from an immigration enforcement role also removed RELA's role in immigration detention centres. "For us, as of the 1st of July, our depots are no longer managed by them. Come the 1st of August, all depots will be solely managed by Immigration," one senior immigration official told us. Amnesty International's visits in the third week of July found that that was generally the case, although RELA was still in charge of one cellblock at the KLIA depot when Amnesty International inspected that facility.

Where RELA was no longer in charge, Amnesty International heard that the change had been for the better. "The conditions have improved a lot after RELA stopped taking care of it," said Yasmin, a 36-year-old woman from Aceh, Indonesia, held in Semenyih.

AN INCOHERENT DETENTION POLICY

If the immigration depots Amnesty International visited are any indication, overcrowding is the rule in immigration detention. Lower numbers would make it easier for authorities to maintain good order and humane conditions in the facilities they administer. But some of Malaysia's immigration policies and practices contribute to overcrowding by prolonging immigration detention.

The detention of refugees and asylum seekers registered with UNHCR is one such case. Officials at Semenyih told Amnesty International that their practice is to release detainees who are registered with UNHCR. "If the UN issues the refugee card, our department always sends them back to the office. We just release them," one detention official told us. Nevertheless, many detainees, including in Semenyih, reported that they held UNHCR cards. When Amnesty International raised cases of refugees with UNHCR cards who were arrested

by police or RELA agents, the Secretary General for the Ministry of Home Affairs explained, “There is a problem with forgery of the refugee cards. We need to refer those cases to UNHCR here. While we refer those cases, they have to come to the detention centre.”¹¹⁷

Between 90,000 and 170,000 refugees and asylum seekers are in Malaysia.¹¹⁸ Most are unregistered.

Given the large number of unregistered refugees in Malaysia, it is not surprising that many detainees who told Amnesty International that they came to Malaysia because they feared persecution in their home countries do not have UNHCR cards. Detention officials could identify and call to UNHCR’s attention those individuals who meet broad criteria that suggest that they may be refugees—for example, by giving UNHCR a list of detainees from particular countries, such as Afghanistan, Myanmar and Sri Lanka. Despite Malaysia’s official unwillingness to recognise refugees, detention centre staff were generally supportive of the UNHCR registration process, if only to reduce the number of detainees. “When the UN comes here, if they want to see anybody, we let them,” an official at the KLIA Immigration Depot told us, saying that UNHCR visited the detention centre once or twice each week. “Some [detainees] have been here too long.” But many detainees told Amnesty International that they had no way of seeing UNHCR officials when they came, possibly because lack of staffing prevents them from systematically conducting preliminary screenings of entire cellblocks. “We want to see the UN,” one man in the KLIA depot said, speaking on behalf of a group from Myanmar. “We want to ask your help to contact the UN. They came, but we were not seen.”

Some detainees reported that they had been able to be registered while in detention. For example, Myo, from Myanmar, told Amnesty International that he was registered by UNHCR one month before the interview, after seven months in detention at the KLIA Immigration Depot. But even in those cases, they are not necessarily released immediately. Asked why he was still in detention when Amnesty International spoke to him, the man replied that he was still waiting for his card.

Second, Myanmar often does not accept persons whom Malaysia attempts to deport, meaning that the detention of those from Myanmar who are not recognised refugees is likely to be indefinite. “If they are from Myanmar, some of them will wait more than three months because we cannot send them back to Myanmar because they don’t have documents,” an official at Semenyih told us.

Third, because deportation is generally at the detainee’s expense, many individuals remain in detention because they cannot afford the cost of a flight to their home countries. Amnesty International spoke to dozens of detainees who were in this situation. For instance, Sujata, age 40, had been held in Lenggeng for one year awaiting deportation to India. “I do not have any money to get a return plane ticket,” she said. Fatima, a 28-year-old from Tamil Nadu, was in the same situation. She served a three-month prison sentence because her agent did not obtain a work permit for her, bringing her to Malaysia on a tourist visa instead. “I was then sent to this detention camp after serving my sentence and have been here for a year. The immigration officers have told me that if I want to leave, I have to arrange my own ticket. I do not have any money to do this.” And in one of the men’s cellblocks, three Filipino men approached an Amnesty International delegate. “We would like to ask the Philippines to help

us,” one said. “We are waiting for only a plane ticket so we can go back to the Philippines.” Detention officials are well aware of this problem. Officials in the KLIA depot pointed out one man from Nigeria to us, saying, “He has a ticket problem. He has nobody to buy a ticket for him. So we are trying to ask for a ticket from our government.”

Finally, some are in detention simply because their employers had never picked them up when they arrived at the airport. “I had one month already at the airport,” said an Indian man in the KLIA Immigration Depot, referring to the airport holding area. “Already I stayed at the airport for one month and twelve days. Then they sent me here. They tried to call my employer, but he never picked up.” One Nepali worker had been held in the KLIA depot for two months, another for three months, and a third for four months; as with the Indian man, all were there simply because their employers had failed to pick them up when they arrived. “The problem is that the employers never came, so they are sent here,” a detention official explained. “Really, within 72 hours they should be sent back.”

Immigration officials emphasised that most detainees spend a relatively short period of time in detention. “Three months would be a really long time already,” the head of Semenyih said, telling Amnesty International that most detainees are at the centre for a few weeks. Referring to the case of an Indian detainee as an example, he said, “After 23 days, we sent him back.” Indonesians are generally returned after just a few days in detention, he told Amnesty International. “This year, in the first six months, we recorded 11,756 entries—new detainees from January to June 2009. Of those, we sent back [deported] 8,554. One thousand forty-six were released to their own employer or to the UN. One thousand six hundred fifty-four were charged with immigration offences. That’s just for Semenyih immigration depot. Last year, 16,678 were sent back from Semenyih, and we released 2,700 to employers or the UN.”¹¹⁹ In 2009, Malaysia deported just over 46,600 people from 13 immigration detention centres, according to news accounts.¹²⁰

Nonetheless, Amnesty International’s interviews indicate that the number of detainees who are held much longer is significant. Amnesty International spoke to many detainees who had been in detention for months, in large part because of immigration policies and practices that kept them there.

7. RECOMMENDATIONS

Amnesty International makes the following recommendations to the Malaysian government that, if implemented, would improve human rights protection for all migrant workers:

To the Federal Executive

- Establish an independent Royal Commission to investigate and report on rights' violations, the reasons migrant workers become undocumented and other problems faced by migrant workers.
- Authorise and direct the Ministry of Human Resources to establish a provident fund to support migrant workers who are seeking legal redress against their employers or who remain in the country as witnesses in cases involving trafficking, forced labour or other forms of labour exploitation.
- Ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the Migrant Workers Convention, the Abolition of Forced Labour Convention (ILO Convention No. 105) and the International Convention on the Elimination of All Forms of Racial Discrimination.
- Issue a standing invitation to the UN special rapporteur on the human rights of migrants and other UN special procedure mandate holders to visit Malaysia to assess the human rights situation in the country.

To the Parliament

- Amend the Employment Act 1955 and the Immigration Act 1959/63 to provide for appropriate criminal and administrative penalties for employers and recruitment agents who withhold passports, work permits, and other identity documents from migrant workers.
- Amend the Employment Act 1955 to provide that the cost of work permits is borne by the employer and not by the worker.
- Repeal section 26 of the Workmen's Compensation Act 1952 to extend coverage under the act to domestic workers.
- Define forced or compulsory labour as a criminal offence under Malaysian law.
- Amend the Prison Act 1995 and the Immigration Act 1959/63 to provide that places of detention, including immigration depots, comply with minimum international standards.
- Repeal section 6(3) of the Immigration Act 1959/63 to ensure that simple unlawful entry is treated as an administrative violation rather than a criminal matter.
- Repeal all laws providing for caning or whipping and all other forms of corporal punishment.

- Allocate additional funding to the Ministry of Human Resources' Labour Department to increase its capacity to conduct labour and workplace safety inspections.

To the Cabinet Committee on Foreign Workers and Illegal Employment

- Strengthen human rights protections in memoranda of understanding with sending countries, including through agreements for the monitoring of recruitment agents who operate in sending countries.
- Make public all memoranda of understanding entered into between Malaysia and sending countries.
- Work with sending countries to develop adequate safeguards in those countries against fraud and deception by recruitment agents.
- Identify recruitment agents in sending countries who are implicated in deceptive or fraudulent practices against migrants and, through the Ministry of Foreign Affairs, refer such information to appropriate agencies in sending countries for appropriate enforcement action.

To the Ministry of Human Resources

- Require that all employers, agents and authorities immediately return all passports and other travel documents to migrant workers.
- Reform the current work authorisation system to allow migrant workers to change employers freely during the time period for which the permit is granted.
- Require recruitment agents to post a bond to be forfeited and used to compensate migrant workers for lost wages and other damages they suffer as the result of the failure of recruitment agents to meet their obligations to workers.
- Enforce existing employment legislation to ensure that workers are paid their wages promptly and within stipulated periods, where possible directly into the worker's bank account.
- Prioritise labour inspections of workplaces that employ outsourced workers.
- Direct labour inspectors to include assessment of workers' accommodation as part of their workplace inspections.
- Amend the First Schedule to the Employment Act 1955 to extend protection of the labour laws to all domestic workers, including rights to overtime pay, weekly rest days and annual holidays.
- Use its authority under section 65 of the Employment Act 1955, which gives the Director General the "power to enter without previous notice at all times any place of employment," to authorise, for the purpose of conducting workplace inspections, the entry of labour inspectors to enter private dwellings where domestic workers are employed. To avoid legal challenge to this authority, the Ministry of Human Resources should, as a condition of

employment of migrant workers in the home, require employers to consent to the entry of labour inspectors to private dwellings for the purpose of conducting workplace inspections.

- Strictly enforce 18 as the minimum age of employment for domestic work.
- Take immediate steps to inform all migrant workers, those in Malaysia as well as those arriving for the first time, of their rights under Malaysian and international law.
- Establish a toll-free telephone line, with appropriate staffing, to receive complaints of mistreatment and exploitation from migrant workers.
- Ensure that representations submitted to the Labour Department and the Industrial Relations Department are investigated promptly, expeditiously referred to the Labour Courts and the Industrial Relations Courts, and resolved without delay.
- Introduce a standard provision for inclusion in migrant workers' contracts that guarantees their rights to freedom of association and collective bargaining and expressly acknowledges that employers are prohibited from obstructing workers' rights to organise.

To the Ministry of Home Affairs

- Immediately end the practice of detaining adolescents under the age of 18 in immigration depots with adults.
- Ensure that its agents and its practices comply with the absolute prohibition on *refoulement*, the return of persons to a country where they would be in danger of torture or persecution.
- End the detention of refugees recognised by UNHCR, refer to UNHCR officials upon intake any detainee who meets broad criteria that suggest that he or she may be a refugee, and allow UNHCR personnel unfettered access to immigration depots and other places of detention.
- For those who have been ordered deported and who are not in need of international protection, ensure that any deportations are carried out at government expense; end the practice of detaining such persons until such time as they or their families pay for their own deportation.
- Release from detention those who cannot be deported.
- Inform all migrants upon detention of their right to communicate with and have access to consular officers of their country and notify the appropriate consular post of their detention if they desire, in line with Malaysia's obligations under article 36(1) of the Vienna Convention on Consular Relations and with the Consular Relations (Vienna Convention) Act 1999.
- Provide that employers cannot cancel work permits in cases where workers are seeking administrative redress through the Labour Department or the Industrial Relations Department.

- Automatically extend six-month special passes and employment authorisation for the same field of work as their original permit without charge to workers who make representations to the Labour Department or the Industrial Relations Department, and renew such passes without charge for at least three months at a time upon a showing that the workers' labour or industrial relations cases are still pending.

To the Ministry of Health

- Remove the requirement that migrants be tested for HIV status as a condition of receiving or renewing a work permit and remove HIV seropositive status from the list of illnesses for which work permits may be denied or cancelled.
- Remove pregnancy, which is not an illness, from this list.
- Ensure that the results of medical examinations are communicated to migrants along with appropriate health information and counselling.
- Guarantee access to adequate healthcare to all residents in Malaysia, including migrants, without discrimination, and in particular ensure that health costs for migrants do not constitute a barrier in access to the health services that are available to Malaysian citizens. Differential pricing of services on the basis of nationality should be eliminated.

To Police and Prosecutors

- Promptly investigate all complaints of ill-treatment, extortion or other misconduct by police or others acting under colour of law, including RELA agents.
- Develop protocols and train police on how to respond appropriately to migrant workers' complaints, how to investigate and collect evidence in such cases, and when and where to provide referrals, including to workers' embassies.
- Effectively train police to identify all persons, men as well as women, who are subjected to trafficking, forced labour and other forms of labour exploitation.
- Prosecute those who commit acts of violence against and those who unlawfully confine migrant workers.
- Prosecute and seek appropriate punishment for Malaysian employers and recruitment agents, including outsourcing agents, who subject workers to trafficking, forced labour or other forms of labour exploitation, including by confiscating and withholding workers' passports or by failing to renew work permits.
- Inform migrants in a language they understand of the reasons for their arrest and their rights to communicate with and have access to consular officers of their country and, if they desire, notify the appropriate consular post of their arrest, in line with Malaysia's obligations under article 36(1) of the Vienna Convention on Consular Relations and with the Consular Relations (Vienna Convention) Act 1999.

To Labour Sending Countries

- Following the example of the Philippines, negotiate memoranda of understanding and other bilateral agreements that provide for minimum wages, a minimum number of days off, and other protections for migrant workers.

¹ See Department of Statistics Malaysia, "Employment," 31 December 2009, http://www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=642%3Aemployment-t-updated31122009&catid=38%3Akaystats&Itemid=11&lang=en (viewed 2 January 2010).

² Interview with Datuk Mahmood Bin Adam, Secretary General, Ministry of Home Affairs, Putrajaya, 22 July 2009.

³ Interview with Dato' Abdul Rahman Othman, Director General of Immigration, Putrajaya, 24 July 2009. For an overview of earlier estimates of the number of undocumented workers in Malaysia, see Vijayakumari Kanapathy, "Malaysia," *Asia and Pacific Migration Journal*, vol. 17 (2008), pp. 338.

⁴ See Azizah Kassim, "Integration of Foreign Workers and Illegal Employment in Malaysia," in *International Migration in Asia: Trends and Policies* (Paris: OECD Publications, 2001), p. 113.

⁵ According to the Population Division of the UN Department of Economic and Social Affairs, in 2010 Malaysia is expected to have 2.36 million international migrants in its territory, more than any other country in Southeast Asia. For the period 2005 to 2010, Malaysia received an estimated 26,000 migrants per year, the third-highest average annual net migration in the region, placing it after Singapore (100,000 per year) and Thailand (60,000 per year). See United Nations, Department of Economic and Social Affairs, Population Division, *International Migration, 2009 Wallchart*, UN Sales No. E.09.XIII.8 (New York: United Nations, 2008), http://www.un.org/esa/population/publications/2009Migration_Chart/ittmig_wallchart09_table.xls (viewed 29 January 2010).

⁶ The 15 countries are Bangladesh, Cambodia, India, Indonesia, Kazakhstan, Laos, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Turkmenistan, Uzbekistan and Vietnam. See, for example, Malaysian Industrial Development Authority, "Employment of Foreign Workers," updated 5 January 2009, http://www.mida.gov.my/en_v2/index.php?page=employment-of-foreign-workers (viewed 17 January 2010).

⁷ Interview with Datuk Mahmood Bin Adam, Secretary General, Ministry of Home Affairs, Putrajaya, 22 July 2009.

⁸ "Freeze on Bangladeshi Workers Stays," *Bernama*, 29 November 2009.

⁹ See, for example, Liz Gooch, "Businesses Struggle with Malaysia's Restrictions on Foreign Workers," *The New York Times*, 31 August 2009, <http://www.nytimes.com/2009/09/01/business/global/01iht-labor.html?pagewanted=1&r=2> (viewed 1 September 2009).

¹⁰ See Convention (No. 29) concerning Forced or Compulsory Labour ("Forced Labour Convention, 1930"), adopted 28 June 1930, as modified by the Final Articles Revision Convention, 1946, 39 UNTS 56 (entered into force 1 May 1932; ratified by Federation of Malaya 11 November 1957) (undertaking by states parties "to suppress the use of forced or compulsory labour in all its forms within the shortest possible period"); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted 7 September 1956, 266 UNTS 3 (entered into force 30 April 1957; accession by Malaysia 18 November 1957); UN Convention against Transnational Organized Crime, adopted 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003; ratified by Malaysia 24 September 2004); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational

Organized Crime, adopted 15 November 2000, UN Doc. A/55/383 (entered into force 25 December 2003; accession by Malaysia 26 February 2009); Convention (No. 138) concerning Minimum Age for Admission to Employment (“Minimum Age Convention”), adopted 26 June 1973, 1015 UNTS 298 (entered into force 19 June 1976; ratified by Malaysia 9 September 1997 with a minimum age of 15 years); Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (“Worst Forms of Child Labour Convention”), adopted 17 June 1999, 2133 UNTS 161 (entered into force 19 November 2000; ratified by Malaysia 10 November 2000); Convention on the Rights of the Child, adopted 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990; accession by Malaysia 17 February 1995).

¹¹ See Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981; accession by Malaysia 5 July 1995).

¹² See Convention (No. 81) concerning Labour Inspection in Industry and Commerce (“Labour Inspection Convention”), adopted 11 July 1947, 54 UNTS 4 (entered into force 7 April 1950; ratified by Malaysia 1 July 1963); Convention (No. 95) concerning the Protection of Wages (“Protection of Wages Convention”), adopted 1 July 1949, 138 UNTS 226 (entered into force 24 September 1952; ratified by Malaysia 17 November 1961); Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (“Right to Organise and Collective Bargaining Convention, 1949”), adopted 1 July 1949, as modified by the Final Articles Revision Convention, 1961, 96 UNTS 258 (entered into force 18 July 1951; ratified by Malaysia 5 June 1961); Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted 29 June 1951, 165 UNTS 304 (entered into force 23 May 1953; ratified by Malaysia 9 September 1997).

¹³ See ILO Declaration on Fundamental Principles and Rights at Work, art. 2, adopted by the General Conference of the ILO, 86th sess., 18 June 1998, <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> (viewed 7 February 2010).

¹⁴ As the Inter-American Court of Human Rights recognised in *Velásquez-Rodríguez*: “An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it” *Velásquez-Rodríguez Case*, Judgement of 29 July 1988, Inter-Am. Ct. H.R. (Ser. C) No. 4 (1988), ¶ 172. For discussions of the principle of due diligence by UN treaty bodies, see, for example, Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work*, UN Doc. E/C.12/GC/18 (2006), ¶ 35; Committee on Economic, Social and Cultural Rights, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Article 3 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/2005/4 (2005), ¶ 20; Human Rights Committee, *General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/74/CRP.4/Rev.6 (2004), ¶ 8. For a discussion of due diligence obligations to address abuses faced by migrant workers, see Amnesty International, *Disposable Labour: Rights of Migrant Workers in South Korea*, AI Index: ASA 25/001/2009 (London: Amnesty International, 2009), pp. 11-12.

¹⁵ See Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise (“Freedom of Association and Protection of the Right to Organise Convention, 1948”), 68 UNTS 18

(entered into force 4 July 1950); Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation (“Discrimination (Employment and Occupation) Convention”), adopted 25 June 1958, 362 UNTS 32 (entered into force 15 June 1960); Convention (No. 105) concerning the Abolition of Forced Labour (“Abolition of Forced Labour Convention, 1957”), adopted 25 June 1957, 320 UNTS 292 (entered into force 17 January 1959; ratification by Federation of Malaya received 13 October 1959 and denounced by Malaysia on 10 January 1990).

¹⁶ See International Covenant on Economic, Social and Cultural Rights, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976); International Covenant on Civil and Political Rights (ICCPR), opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“Migrant Workers Convention”), adopted 18 December 1990, UN Doc. A/RES/45/158 (entered into force 1 July 2003).

¹⁷ See ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, general principles 5-10, <http://www.aseansec.org/19264.htm> (viewed 15 February 2010).

¹⁸ See Mustaqim Adamrah, “Draft Deadlocked over Key Issues,” *The Jakarta Post*, 28 January 2010, <http://www.thejakartapost.com/news/2010/01/28/draft-deadlocked-over-key-issues.html> (viewed 28 January 2010).

¹⁹ See Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 182), § 4 (Philippines).

²⁰ See Dovelyn Rannveig Agunias and Neil G. Ruiz, “Protecting Overseas Workers: Lessons and Cautions from the Philippines,” *Migration Policy Institute Insight*, September 2007, http://www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf (viewed 15 February 2010).

²¹ See Fomema, www.fomema.com.my/html/ (viewed 24 January 2010).

²² International law places few limits on the state’s prerogative to determine when and under what conditions non-citizens may enter the country; control over borders is an attribute of sovereignty. Nevertheless, as the special rapporteur on the human rights of migrants observed in his 2008 report to the Human Rights Council, that power is not absolute:

The State has broad authority in determining admission, conditions of stay, and the removal of non-nationals. In addition, the State has the sovereign authority to take measures protecting its national security, and to determine the conditions upon which nationality is to be granted. This power to manage admission and expulsion has, however, to be exercised in full respect for the fundamental human rights and freedoms of non-nationals, which are granted under a wide range of international human rights instruments and customary international law.

UN Human Rights Council, 7th sess., agenda item 3, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development: Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante*, UN Doc. A/HRC/7/12 (2008), ¶ 13.

²³ UNAIDS, *International Guidelines on HIV/AIDS and Human Rights* (2006 consolidated version), ¶ 127. See also UNAIDS and IOM, “UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions,” June 2004, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/health/UNAIDS_IOM_statement_travel_restrictions.pdf (viewed 31 January 2010); Human Rights Watch, *Discrimination*,

Denial, and Deportation: Human Rights Abuses Affecting Migrants with HIV (New York: Human Rights Watch, 2009), pp. 3-6; CARAM Asia, *State of Health of Migrants 2007: Mandatory Testing* (Kuala Lumpur: CARAM Asia Berhad, 2007), p. 11, http://www.caramasia.org/index.php?option=com_content&task=view&id=592&Itemid=343 (viewed 10 January 2010).

²⁴ Amounts are given in the currency as they were reported to Amnesty International, with their equivalent in US dollars based on the prevailing exchange rate as this report was being finalised. In January 2010, one US dollar was equal to 3.43 Malaysian ringgit; 69 Bangladeshi taka; 1,000 Burmese kyat; 47 Indian rupees; 9,505 Indonesian rupiah; 75 Nepali rupees; 33 Thai baht; and 18,480 Vietnamese dong. (The official exchange rate for the Burmese kyat was 6.41 to one U.S. dollar, but the black market exchange rate was approximately 1,000 kyat to one U.S. dollar in January 2010, according to *The Irrawady*, a news magazine that tracks street exchange rates. This report uses the latter exchange rate for the kyat.) US dollar equivalents are rounded to the nearest five cents for amounts under \$10, to the nearest dollar for amounts between \$10 and \$100, and to the nearest five dollars for higher amounts.

²⁵ See Agunias and Ruiz, "Protecting Overseas Workers."

²⁶ For a discussion of the Indonesian government's regulation of labour recruiters and abuses in training centres, see Human Rights Watch, *Help Wanted: Abuses Against Female Migrant Domestic Workers in Indonesia and Malaysia* (New York: Human Rights Watch, 2004), pp. 21-22, 30-36.

²⁷ For an examination of the financial costs of moving that migrant workers face, see UN Development Programme, *Human Development Report 2009, Overcoming Barriers: Human Mobility and Development* (New York: Palgrave Macmillan, 2009), p. 54 (noting that Indonesian workers moving to Malaysia pay costs equivalent to six-and-a-half times their monthly earnings).

²⁸ Protection of Wages Convention, art. 9.

²⁹ See Human Rights Watch, *Help Wanted*, p. 25.

³⁰ See Protection of Wages Convention, art. 9.

³¹ See "Illegal Levy Should Stop, Says Labour DG," *Bernama.com*, 25 October 2009, <http://www.bernama.com/bernama/v5/newsgeneral.php?id=449578> (viewed 18 January 2010).

³² "269 Employers Charged for Immigration Offences from 2007-09," *Bernama*, 15 January 2010.

³³ See Human Rights Watch, *Help Wanted*, p. 29.

³⁴ See, for example, International Programme on the Elimination of Child Labour, *Helping Hands and Shackled Lives? Understanding Child Domestic Labour and Responses to It* (Geneva: International Labour Organization, 2004), pp. 49-62; Paulo Sérgio Pinheiro, *World Report on Violence Against Children* (Geneva: UN Secretary-General's Study on Violence Against Children, 2006), pp. 251-53.

³⁵ The Convention on the Rights of the Child prohibits economic exploitation and the employment of children in work that is likely to be hazardous, interfere with their education, or be harmful to their health or development. ILO Convention No. 182, the Worst Forms of Child Labour Convention provides that children under the age of 18 may not be employed in work that is likely to harm their health, safety or morals. Prohibited labour includes work that exposes them to physical, psychological or sexual abuse; forces them to work long hours or during the night; or unreasonably confines them to their employers'

premises. See Convention on the Rights of the Child, art. 32(1); Worst Forms of Child Labour Convention, art. 3(d); Worst Forms of Child Labour Recommendation, 1999 (Recommendation 190), art. 3. See also Convention on the Rights of the Child, arts. 34 (protection from sexual exploitation), 35 (protection from trafficking), and 36 (protection against all other forms of exploitation).

³⁶ Interview with Dr. Irene Fernandez, Director, Tenaganita, Kuala Lumpur, 10 July 2009.

³⁷ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 26 on Women Migrant Workers*, UN Doc. CEDAW/C/2009/WP.1/R (2008), ¶ 20. On the duty of due diligence to protect against violence against women, see Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, 11th sess. (1992), ¶ 9, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HR/GEN/1/Rev.; UN Declaration on the Elimination of Violence against Women, UN Doc. A/RES/48/104 (1993), ¶ 4(c).

³⁸ See Occupational Safety and Health Act 1994 (Act 514), § 1(2); Convention (No. 81) concerning Labour Inspection in Industry and Commerce (“Labour Inspection Convention”), art. 1, adopted 11 July 1947, 54 UNTS 4 (entered into force 7 April 1950; ratified by Malaysia 1 July 1963). See generally International Covenant on Economic, Social and Cultural Rights, art. 7.

³⁹ Rengas wood is “strongly irritating to the skin,” a woodworking specialist website notes. Eric Meier, “Wood Allergies and Toxicity,” The Wood Database, <http://www.wood-database.com/wood-articles/wood-allergies-and-toxicity/> (viewed 26 December 2009). The Malaysian Timber Council reports, “Due to the poisonous nature of the sap, the timber is not very often exploited,” although seasoned timber is safe to handle. Malaysian Timber Council, “Rengas,” MTC Wood Wizard, <http://woodwizard.mtc.com.my:8888/report.asp?ItemID=100>. Exposure to rengas wood is listed among the occupational injuries for which workers may be compensated under Malaysia’s workers’ compensation laws. See Workmen’s Compensation Act 1952 (Act 273), 2d sched.

⁴⁰ See Workers’ Minimum Standards of Housing and Amenities Act 1990 (Act 446), ¶ 6(1).

⁴¹ See SR International Logistics, “Standard Containers,” http://www.srinternational.com/standard_containers.htm (viewed 31 December 2009).

⁴² ILO, “Details of Indicators for Labour Exploitation,” March 2009 (revised September 2009), www.ilo.org/wcmsp5/groups/public/---ed.../wcms_105035.pdf (viewed 5 January 2010).

⁴³ See ILO, “Details of Indicators for Labour Exploitation.”

⁴⁴ The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery defines debt bondage as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.” When workers pay extortionate interest, “the value of [his or her] services as reasonably assessed is not applied toward the liquidation of the debt.” And when workers must provide services for months or years, working unreasonable hours and performing labour they did not agree to undertake when they were recruited, “the length *and nature* of those services are not respectively limited and defined” (emphasis added). Dr. Kevin Bales, an academic who has studied contemporary forms of slavery, observes that “requiring the pledge of a person’s services to repay a debt becomes abusive if the terms and conditions of such an arrangement are unregulated.” Kevin Bales, *Understanding Global Slavery: A Reader* (Berkeley and Los Angeles:

University of California Press, 2005), p. 60.

⁴⁵ The Working Group on Contemporary Forms of Slavery has noted that the confiscation of passports by employers is a significant means of imposing control on migrant workers. In its June 1996 session, the working group urged states “to take necessary measures to sanction employers for the confiscation of passports belonging to migrant workers, in particular migrant domestic workers.” UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 48th sess., provisional agenda item 15, *Contemporary Forms of Slavery: Report of the Working Group on Contemporary Forms of Slavery on Its Twenty-First Session*, UN Doc. E/CN.4/Sub.2/1996/24 (1996), ¶ 113, Recommendation 9(2). Similarly, the special rapporteur on the human rights of migrants has noted, “The lack of documents is one of the major concerns of the Special Rapporteur, since it places migrant domestic workers in a situation of complete dependence and hampers their movements, including their return to their country of origin without the employer’s consent.” UN Commission on Human Rights, 60th sess., provisional agenda item 14(a), *Specific Groups and Individuals: Migrant Workers: Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, Submitted Pursuant to Commission on Human Rights Resolution 2003/46*, UN Doc. E/CN.4/2004/76 (2004), ¶ 34.

⁴⁶ The Forced Labour Convention, 1930, defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily,” with the exception of compulsory military service, normal civic obligations, emergency work required in the event of war or calamity, and work that is a consequence of a criminal conviction.

⁴⁷ “‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” Protocol to Prevent, Suppress and Punish Trafficking in Persons, art. 3(a).

⁴⁸ U.S. Department of State, Office of the Under Secretary for Democracy and Global Affairs and Bureau of Public Affairs, *Trafficking in Persons Report 2009* (Washington, D.C.: U.S. Department of State, 2009), p. 198.

<http://www.state.gov/g/tip/rls/tiprpt/2009/index.htm> (viewed 5 January 2010).

⁴⁹ See, for example, ILO, *ILO Action against Trafficking in Human Beings* (Geneva: International Labour Office, 2008), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf (viewed 15 February 2010).

⁵⁰ See Anti-Trafficking in Persons Act 2007 (Act 670).

⁵¹ U.S. Department of State, *Trafficking in Persons Report 2009*, p. 199.

⁵² U.S. Department of State, *Trafficking in Persons Report 2009*, p. 49.

⁵³ See *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*, Report to the Committee on Foreign Relations, U.S. Senate, 111th Cong., 1st sess., S. Prt. 111-18 (3 April 2009).

⁵⁴ See “Indonesia Condemns Arrest of Diplomat’s Wife,” Radio Australia, 10 October 2007, reposted at

Embassy of Indonesia, Ottawa, News, http://www.indonesia-ottawa.org/information/details.php?type=news_copy&id=4820 (viewed 4 January 2010); Jonathan Kent, "Incidents May Mar Malaysia's Tourism Bid," BBC News, 3 January 2007, <http://news.bbc.co.uk/2/hi/asia-pacific/6228125.stm> (viewed 4 January 2010).

⁵⁵ Interview with Dato' Adul Rahman Othman, Director General of Immigration, Putrajaya, 24 July 2009.

⁵⁶ "Malaysia Plans IDs for Refugees to Avoid Arrest," Associated Press, 2 January 2010.

⁵⁷ RELA has the power, "where it has reasonable belief that any person is a terrorist, undesirable person, illegal immigrant or an occupier, to stop the person in order to make all such inquiries or to require the production of all such documents or other things as the competent authority [RELA] may consider necessary." RELA agents "may arrest without warrant any person who when stopped . . . refuses or fails to comply with any reasonable requirement . . . ; refuses to answer any question that may be lawfully put to him . . . ; makes any statement or produces any identification which the [agent] knows or has reason to believe to be false; or . . . refuses or fails to produce identification documents or things that may be lawfully required . . ." Essential (Ikatan Relawan Rakyat) (Amendment) Regulations, 2005, §§ 4(b), (c).

⁵⁸ Seth Mydans, "A Growing Source of Fear for Migrants in Malaysia," *The New York Times*, 10 December 2007, <http://www.nytimes.com/2007/12/10/world/asia/10malaysia.html?scp=1&sq=RELA+Malaysia&st=nyt> (viewed 4 January 2010).

⁵⁹ Interview with Dato' Abdul Rahman Othman, Director General of Immigration, Putrajaya, 24 July 2009.

⁶⁰ See, for example, Mien Ly, "A Night Out with RELA," *The Nutgraph*, 2 October 2009, <http://thenutgraph.com/a-night-out-with-rela> (viewed 2 October 2010) (account of a RELA raid on 2 September 2009).

⁶¹ See "Immigration Department Urged to Put Off Crackdown Until after CNY [Chinese New Year]," *Bernama*, 26 January 2010.

⁶² See Employment Act 1955 (Act 265), §§ 60A(3)(a), (1). Overtime pay is "a rate not less than one and a half times [the employee's] hourly rate of pay irrespective of the basis on which his rate of pay is fixed." Employment Act 1955, § 60A(3)(a).

⁶³ See Employment Act 1955, §§ 60A(7), (2), (4)(a); 60C(2); Employment (Limitation of Overtime Work) Regulations 1980, § 2. Work performed on a rest day does not count as overtime. See Employment Act 1955, § 60A(4)(a).

⁶⁴ See Employment Act 1955, § 60A(1).

⁶⁵ Employment Act 1955, §§ 59 ("Every employee shall be allowed in each week a rest day of one whole day . . ."), 60A(2). With the approval of the Labour Department, employers may schedule rest days at any point in the month—for example, an employee may take off four days in a row instead of one each week. See Employment Act 1955, § 59(1B).

⁶⁶ See Employment Act 1955, § 60D; Holidays Act 1951 (Act 369), 2d sched.

⁶⁷ See Employment Act 1955, § 60E.

⁶⁸ See Employment Act 1955, § 60F.

⁶⁹ See Employment Act 1955, § 16(1). Applying this provision, a labour court awarded 71 rubber tappers a total of 109,200 ringgit in 2000 after their employer failed to pay them a minimum wage of 24 days per month for a six-year period. See M.N. D'Cruz, *A Handbook of Malaysian Labour Laws* (Petaling Jaya, Selangor, Malaysia: Leeds Publications, 2009), p. 55.

⁷⁰ Convention (No. 14) concerning the Application of the Weekly Rest in Industrial Undertakings ("Weekly Rest (Industry) Convention, 1921"), art. 2, adopted 17 November 1921, as modified by the Final Articles Revision Convention, 1946, 38 UNTS 188 (entered into force 19 June 1923; ratified by Malaysia 3 March 1964).

⁷¹ Malaysia has a minimum wage law, the Wage Councils Act 1947 (Act 195), but has set minimum wages only for cinema workers, hotel and catering workers, shop assistants, and stevedores. See Wages Regulation (Catering and Hotel) Order 1967; Wages Regulation (Cinema Workers) Order 1972; Wages Council (Penang Stevedores and Cargo-Handlers) Order 1977; Wages Regulations (Shop Assistants) Order 1970. See also Malaysia Ministry of Human Resources, Wages Council, http://www.mohr.gov.my/index.php?Itemid=225&id=136&option=com_content&task=view (viewed 10 January 2010).

⁷² The Protection of Wages Convention is intended to afford protections to workers against, for example, payment in company scrip ("payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited") and payment of wages to third parties ("except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary"). The Protection of Wages Convention also requires that any company stores that sell goods to workers do so at fair and reasonable prices and that any deductions from wages are provided for by law or fixed by collective agreement or arbitration award. See Protection of Wages Convention, arts. 3, 5, 7-8.

⁷³ See Right to Organise and Collective Bargaining Convention, 1949, art. 1(2)(a) (protection against acts calculated to "make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership").

⁷⁴ Section 8 of the Employment Act 1955 provides: "Nothing in any contract of service shall in any manner restrict the right of any employee who is party to such contract—

(a) to join a registered trade union;

(b) to participate in the activities of a registered trade union, whether as an officer of such union or otherwise;

(c) to associate with any other persons for the purpose of organizing a trade union in accordance with the Trade Unions Act 1959."

A contractual term that provides otherwise is void. See Employment Act 1955, § 7 ("any term or condition of a contract of service or of an agreement . . . which provides a term or condition of service which is less favourable to an employee than a term or condition of service prescribed by this Act or any regulations, order or other subsidiary legislation whatsoever made thereunder shall be void").

Moreover, as a party to the Right to Organise and Collective Bargaining Convention, 1949, Malaysia is obligated to protect against "acts calculated to . . . make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership." Right to Organise

and Collective Bargaining Convention, 1949, art. 1(2)(a).

⁷⁵ See Employment Act 1955, § 10(1).

⁷⁶ See Employment Regulations 1957, §§ 8, 5(b).

⁷⁷ See Employment Regulations 1957, § 9.

⁷⁸ However, an employer may advance more than one month's wages to enable a worker to purchase or make improvements on a house, to enable the worker to purchase land, livestock, a car, a motorcycle, a bicycle, or shares of the employer's business, or for another purpose approved by the Labour Department. See Employment Act 1955, § 22.

⁷⁹ See *Chong Wah Plastic Sdn Bhd v. Idris*, [2001] ILR 598 (Industrial Ct.). Similarly, the Migration for Employment Convention (Revised), 1949, requires each state party to "to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of . . . remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons," among other matters. Convention (No. 97) concerning Migration for Employment (Revised 1949) ("Migration for Employment Convention (Revised), 1949"), adopted 1 July 1949, 120 UNTS 72 (entered into force 22 January 1952; ratified by Malaysia (Sabah) 3 March 1964). Sabah has ratified the Migration for Employment Convention (Revised), 1949, but it is not clear that Malaysia has accepted the applicability of the convention elsewhere in the country.

⁸⁰ See Employment Act 1955, § 12(2).

⁸¹ See Employment Act 1955, § 57.

⁸² An employer is not liable for compensation if the injury does not disable the worker for at least four days or if the injury is the result of the worker being under the influence of alcohol or a drug, unless the injury results in the worker's death. See Workmen's Compensation Act 1952, § 4. The amount of compensation is set by section 8 of the Workmen's Compensation Act 1952.

⁸³ See Workmen's Compensation Act 1952, § 26; Workmen's Compensation (Foreign Workers Compensation Scheme) (Insurance) Order 1996.

⁸⁴ See Workmen's Compensation Act 1952, § 2(1)(c).

⁸⁵ See Employment Act 1955, 1st sched.

⁸⁶ See CEDAW, art. 2.

⁸⁷ See CEDAW, art. 11.

⁸⁸ Ministry of Human Resources, *Labour and Human Resources Statistics 2008* (Putrajaya, Malaysia: Ministry of Human Resources, 2009), Table B1.1, Number of Workplaces Inspected by Industry, 2006-2008, pp. 79-80, http://www.mohr.gov.my/index.php?option=com_content&view=article&id=1078%3Alabour-and-human-resources-statistics-2008&catid=97%3Alabour-and-human-resources-statistics&Itemid=536&lang=en (viewed 10 January 2010).

⁸⁹ Labour Inspection Convention, art. 1.

⁹⁰ Labour Inspection Convention, art. 3.

⁹¹ Police report, 11 October 2007.

⁹² Police report, 11 October 2007.

⁹³ Interview with Secretary General, Ministry of Human Resources, Putrajaya, 29 July 2009.

⁹⁴ Interview with Datuk Mahmood Bin Adam, Secretary General, Ministry of Home Affairs, Putrajaya, 22 July 2009.

⁹⁵ Police report, 20 November 2007.

⁹⁶ Interview with Dr. Irene Fernandez, Director, Tenaganita, Kuala Lumpur, 10 July 2009.

⁹⁷ See Migrant Rights International and Migrant Forum in Asia, "Living with RELA Operations and Whipping: An Appeal by Refugees from Burma Residing in Malaysia," distributed at Human Rights Council, 7th sess., 18 March 2008; Médecins sans Frontières, "*We Are Worth Nothing*" – *Refugee and Asylum Seeker Community in Malaysia* (Jette, Belgium: MSF, 2007), <http://www.msf.org/source/countries/asia/malaysia/2007/MSFbriefingpaper.pdf> (viewed 29 June 2009).

⁹⁸ UN Economic and Social Council, Commission on Human Rights, 59th sess., provisional agenda item 14(a), *Specific Groups and Individuals: Migrant Workers: Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, Submitted Pursuant to Commission on Human Rights Resolution 2002/62*, UN Doc. E/CN.4/2003/85 (2002), ¶ 22.

⁹⁹ Immigration Act 1959/63 (Act 155), § 6(3).

¹⁰⁰ Immigration Act 1959/63, § 36.

¹⁰¹ See Immigration Act 1959/63, § 15(4).

¹⁰² See Immigration Act 1959/63, §§ 5(2), 57.

¹⁰³ Article 5(4) of the Constitution provides:

Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority:

Provided that this Clause shall not apply to the arrest or detention of any person under the existing law relating to restricted residence

The 14-day time limit for non-citizens is found in section 51(5)(b) of the Immigration Act 1959/63.

¹⁰⁴ See UN General Assembly, Human Rights Council, 7th sess., provisional agenda item 3, *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/7/4 (2008), ¶ 53.

¹⁰⁵ See Amnesty International, "Malaysia: End Caning as Punishment Against Immigrants," AI Index: ASA 28/004/2009, <http://www.amnesty.org/en/library/asset/ASA28/004/2009/en/cb8fcc4f-1721-4953-81f9-5999cc601363/asa280042009eng.pdf> (viewed 15 January 2010).

¹⁰⁶ See Immigration Act 1959/63, §§ 55A(1) (unlawfully conveying a person to Malaysia punishable by fine between 10,000 and 50,000 ringgit, imprisonment for term of two to five years, and "shall also be liable to whipping of not more than six strokes"), 55A(4) (higher penalties for acting with others in

unlawfully conveying a person to Malaysia, including mandatory caning), 56(1)(d), (bb) (harbouring a person in violation of immigration laws punishable by fine of 10,000 to 50,000 ringgit per person; in addition, harbouring more than five persons at the same time punishable by six months to five years' imprisonment and possible caning); 55D (forgery or alteration of passport or immigration document punishable by fine between 30,000 and 100,000 ringgit, imprisonment of five to ten years and mandatory caning "of not more than six strokes"); 55B(3) (employment of five persons without valid work authorisation at the same time punishable by imprisonment for six months to five years and "shall also be liable to whipping of not more than six strokes"). But see Immigration Act 1959/63, § 55C (defence that accused had no knowledge of offence or took reasonable precaution and exercised due diligence).

¹⁰⁷ See Amnesty International, "Malaysia: End Caning as Punishment Against Immigrants," AI Index: ASA 28/004/2009, <http://www.amnesty.org/en/library/asset/ASA28/004/2009/en/cb8fcc4f-1721-4953-81f9-5999cc601363/asa280042009eng.pdf> (viewed 16 January 2010). In February 2010, three women were caned after a Shariah court convicted them, along with four men, of extramarital sex. See Amnesty International, "Malaysia Urged to End Brutal Punishments after Women Caned," 18 February 2010, <http://www.amnesty.org/en/news-and-updates/news/malaysia-urged-end-brutal-punishments-after-women-caned-20100218> (viewed 18 February 2010). See also Amnesty International, "Malaysian Woman First to Be Caned Under Shariah Law," 21 August 2009, <http://www.amnesty.org/en/news-and-updates/feature-stories/malaysian-woman-caning-shariah-20090821> (viewed 16 January 2010).

¹⁰⁸ See Liew Chin Tong, MP for Bukit Bendera, "Caning of Illegal Migrants in Malaysia Is Not the Solution," 17 June 2009, <http://www.dapmalaysia.org/english/2009/jun09/bul/bul3805.htm> (viewed 16 January 2010).

¹⁰⁹ See also Christine Chan and Aidila Razak, "Swift 'Injustice' at Immigration Courts," *Malaysiakini*, 28 October 2009.

¹¹⁰ See Yoong Pui Shen, "Migrant Caned Despite Pending Appeal," *Malaysiakini*, 22 January 2010.

¹¹¹ As the UN special rapporteur on torture observed in a 1986 report to the Commission on Human Rights:

The struggle against torture has become one of the leading themes within the international community. Torture is now absolutely and without any reservation prohibited under international law whether in time of peace or of war. In all human rights instruments the prohibition of torture belongs to the group of rights from which no derogation can be made. The International Court of Justice has qualified the obligation to respect the basic human rights, to which the right to be tortured belongs beyond any doubt, as obligations *erga omnes*, obligations which a State has *vis-à-vis* the community of States as a whole and in the implementation of which every State has a legal interest. The International Law Commission in its draft articles on State responsibility has labelled serious violations of these basic human rights as "international crimes," giving rise to the specific responsibility of the State concerned. In view of these qualifications the prohibition of torture can be considered to belong to the rules of *jus cogens*. If ever a phenomenon was outlawed unreservedly and unconditionally it is torture.

UN Economic and Social Council, Commission on Human Rights, 42d sess., agenda item 10(a), *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Report by the Special Rapporteur, Mr. P. Kooijmans, Appointed Pursuant to Commission on Human Rights Resolution 1985/33*, UN Doc.

E/CN.4/1986/15 (1986), ¶ 3.

¹¹² See Universal Declaration of Human Rights, arts. 10-11, GA Res. 217 A (III) (1948); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 17, GA Res. 43/173 (1998); Basic Principles on the Role of Lawyers, adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, principle 5, Havana, Cuba, 27 August to 7 September 1990, <http://www2.ohchr.org/english/law/lawyers.htm> (viewed 15 February 2010). The fair trial provisions of the Universal Declaration of Human Rights “are for the most part considered declarative of customary international law.” Lawyers Committee for Human Rights, *What Is a Fair Trial? A Basic Guide to Legal Standards and Practice* (New York: Lawyers Committee for Human Rights, 2000), p. 3 n. 7.

¹¹³ See Standard Minimum Rules for the Treatment of Prisoners, approved by U.N. ECOSOC Res. 663 C (XXIV) (1957) and Res. 2076 (LXII) (1977). See also UN Economic and Social Council, Commission on Human Rights, 55th sess., provisional agenda item 11(a), *Civil and Political Rights, Including Questions of Torture and Detention: Report of the Working Group on Arbitrary Detention*, UN Doc. E/CN.4/1999/63 (1998) (minimum guarantees for the detention of immigrants and asylum-seekers).

¹¹⁴ As Human Rights Watch has observed, in any detention setting, “[t]rue prison capacity is difficult to estimate objectively and, as a result, capacity figures are notoriously easy to manipulate”; the task is made more difficult because “there are no universally accepted objective standards setting out the amount of space necessary per inmate.” See Human Rights Watch, *Behind Bars in Brazil* (New York: Human Rights Watch, 1998), p. 24 & n. 60.

¹¹⁵ See SUARAM, Memorandum to SUHAKAM on Poor Conditions of Immigration Detention Centres Contributing to Outbreak of Leptospirosis, 27 May 2009, <http://www.suaram.net/node/162> (viewed 10 January 2010); SUARAM, *Malaysia Civil and Political Rights Report 2009: Overview* (Kuala Lumpur: SUARAM, 2009), p. 27.

¹¹⁶ See Convention on the Rights of the Child, art. 37(c).

¹¹⁷ Interview with Datuk Mahmood Bin Adam, Secretary General, Ministry of Home Affairs, Putrajaya, 22 July 2009.

¹¹⁸ The office of the UN High Commissioner for Refugees (UNHCR) estimates that there are 90,000 refugees and asylum seekers and a total “population of concern” (a category that includes stateless persons and others to whom UNHCR extends protection or assistance) of some 147,000 in Malaysia. The estimates of nongovernmental organisations are higher. For example, the US Committee for Refugees and Immigrants estimates that at the end of 2008, there were 171,500 refugees and asylum seekers in Malaysia, including 79,000 from Myanmar and 72,400 from the Philippines. See UNHCR, “2010 Country Operations Profile – Malaysia,” <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4884c6> (viewed 2 January 2010); US Committee for Refugees and Immigrants, *World Refugee Survey 2009*, p. 33, <http://www.refugees.org/article.aspx?id=2370> (viewed 2 January 2010).

¹¹⁹ Interview with head of Semenyih Immigration Depot, 23 July 2009.

¹²⁰ The Immigration Department’s Deportation and Depot Management Unit reported 46,641 deportations in 2009, a decline from the previous two years. Malaysia deported 57,490 in 2007 and 60,800 in 2008. See Christine Chan, “Fewer Illegal Immigrants Packed Off Last Year,” *Malaysiakini*, 15 January 2010, <http://www.malaysiakini.com/news/122003> (viewed 15 January 2010).



WHETHER IN A HIGH-PROFILE
CONFLICT OR A FORGOTTEN
CORNER OF THE GLOBE,
AMNESTY INTERNATIONAL
CAMPAIGNS FOR JUSTICE, FREEDOM
AND DIGNITY FOR ALL AND SEEKS TO
GALVANIZE PUBLIC SUPPORT
TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my Visa Mastercard

number

expiry date

signature

**I WANT
TO HELP**

Please return this form to the Amnesty International office in your country.
For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites

If there is not an Amnesty International office in your country, please return this form to:
Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom

www.amnesty.org





TRAPPED **THE EXPLOITATION OF MIGRANT WORKERS IN MALAYSIA**

Drawn by promises of jobs in Malaysia, thousands of men and women from Bangladesh, Indonesia, Nepal and elsewhere in the region pay substantial sums to recruitment agents. Once they arrive, they often find that much of what their agents told them about their new jobs is untrue – the pay, type of work, even the existence of those jobs or their legal status in the country.

Malaysia's economy depends on the labour of migrant workers, who account for up to one third of the country's workforce. Yet the government effectively criminalizes them, imposing severe and excessive penalties – in some cases caning – even when immigration violations are due to an employer's error. Too often, government policies punish the victims of human rights abuses instead of the perpetrators.

Large-scale, public round-ups in markets and on city streets, and indiscriminate raids without warrants on private dwellings in poorer neighbourhoods are common. Police frequently shake down migrants for "coffee money" – with refugees and asylum-seekers, who have no protection under Malaysian law, particularly at risk. Migrants who are arrested are held in deplorable conditions in immigration detention centres.

Malaysia can and should do more, beginning with a reform of its labour laws, prompt investigation of workplace and police abuses, and effective use of its Anti-Trafficking in Persons Act.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

www.amnesty.org

Index: ASA 28/002/2010
March 2010

EQUALITY IN LAW
IS A HUMAN RIGHT
AMNESTY
INTERNATIONAL

