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Malaysia

Human rights at risk in mass deportation of undocumented migrants

“I understand the emotions generated among our people because of children having died in detention centres, the canings that are happening and other controversial events that are being covered profusely in the media.”¹

1. Introduction

In July 2004, Malaysian Home Minister Azmi Khalid announced plans to expel more than one million ‘illegal immigrants’, many of whom are undocumented migrant workers, from the country by the end of 2005. In August, Deputy Prime Minister Najib Razak stated that the government would seek to prosecute all arrested undocumented migrants under the Immigration Act prior to deportation.² Those convicted under the Act are liable to imprisonment and caning.³

The government intends to deploy the People's Volunteer Corps, an organization of uniformed part-time volunteers with some policing powers, to assist the regular police and immigration officials in the planned mass arrest and detention operations.⁴ Preparations are also underway to introduce biometric identification cards to enhance the long-term regulation of the entry and exit of migrant workers.⁵ Although the Malaysian government announced an ‘amnesty period’ during which ‘illegal immigrants’ could return to their home country without facing penalty between 29 October and 14 November 2004, Home Minister Azmi Khalid confirmed in October that “a large-scale deportation exercise would begin in January”.⁶

¹ Philippine President Gloria Macapagal Arroyo commenting on a public outcry in relation to the 2002 mass deportation of Filipino migrant workers. “Manila sends mission to Malaysia on deportations”, *Reuters*, 31 August 2002.

² “Government acts to stem rising tide of illegal workers”, *The Star*, 11 August 2004.

³ Immigration Act 1959/63 (2002 Amendment) Section 56.

⁴ “Malaysia plans new crackdown on illegal workers”, *Agence France Presse*, 13 July 2004.

⁵ “Malaysia to consider halting deportation of Indonesian illegal immigrants”, *Bernama*, 19 August 2004.

⁶ “Government offers amnesty to all illegal immigrants”, *Malaysiakini*, 22 October 2004.

Amnesty International is concerned that the government's current mass deportation plans may result in serious human rights violations. As part of continuing efforts to regulate migration flows, Malaysia has periodically implemented "special operation" mass expulsions within specified time frames. In March 2002, under former Prime Minister Mahathir Mohamad, the government ordered an estimated 600,000⁷ undocumented migrant workers to leave Malaysia before an August 2002 deadline, after which harsher penalties were to be imposed under the newly amended Immigration Act, including sentences of up to five years imprisonment and six strokes of the cane. Over 300,000 migrant workers left Malaysia during the crackdown and severe overcrowding was reported in departure ports, during transportation and in many of the country's immigration detention centres, especially those in Sabah (East Malaysia).⁸

In apparent contravention of international standards on the treatment of detainees, unsanitary conditions and inadequate provision of food, clean water and health care during the deportation process were reported to have contributed to the deaths from various treatable illnesses of scores of deportees, including at least three children.⁹ Given the scale of the proposed 2005 detentions and deportations, Amnesty International fears that similar violations of the rights of detainees may re-occur.

While Amnesty International recognizes the Malaysian government's sovereign right to control its borders from its territory, the organization fears that given that Malaysia is not party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, it is likely that the intended arrest and deportation of over one million 'illegal immigrants' will also target persons who are in fact refugees or would otherwise be at risk of being subjected to serious human rights violations if returned to their country of origin. The forcible return of an individual to a territory where s/he would be at risk of serious human rights violations constitutes *refoulement* and is strictly prohibited under international law.

→ Amnesty International urges the Malaysian authorities to halt the planned mass deportation until they can guarantee that methods of dealing with immigration issues fully protect the fundamental rights of asylum-seekers, refugees and undocumented migrants in accordance with internationally recognized human rights standards.

Amnesty International's human rights concerns with regard to the Malaysian government's proposed policy include the:

⁷ Data varies between 600,000 and 1,5 million undocumented migrant workers.

⁸ "Malaysia: Human Rights Report 2002", Suaram, pp. 131-135.

⁹ "Philippine delegation visits Sabah deportees camp", *Reuters*, 4 September 2002.

1. Risk of mass expulsion without examining the individual circumstances of undocumented migrant workers;
2. Risk of *refoulement* of asylum-seekers, refugees and others to their country of origin, where they may be at risk of serious human rights violations, including extrajudicial executions, torture, arbitrary detention, and ‘disappearances’;
3. Lack of guarantees that trials of individuals charged under the Immigration Act will be fully consistent with international standards for fair trials;
4. Risk of cruel, inhuman or degrading treatment during arrest, detention and through punishment under the Immigration Act;
5. Risk that all those detained, but particularly vulnerable groups, such as women and children, may suffer other human rights violations, including denial of access to adequate health care in detention.

2. Migrant Workers: entitled to respect for their fundamental human rights

2.1 Background

According to government figures, until 1 June 2004, there were at least 1.3 million documented migrant workers working in Malaysia (an increase of about 500,000 since 2003) and between 700,000 to 1.2 million undocumented migrant workers.¹⁰ The authorities argue current trends indicate that unless economic migration is regulated more effectively, documented and undocumented foreign workers will comprise 30 per cent of the national workforce in the next few years.¹¹

Government officials acknowledge the contribution made by foreign labour in increasing the country’s economy and productive capacity. As a rapidly developing nation with a population of 25 million, Malaysian business continues to benefit from competitive labour supplies from poorer neighbouring countries, including the Philippines, Indonesia, Bangladesh and India, especially to work in the low-skilled sectors of construction,

¹⁰ Data varies between the announcement of Azmi Khalid, Malaysia’s Home Minister in July 2004, and that of Deputy Prime Minister Najib Razak in August 2004. Accurate figures on the numbers of migrant workers in Malaysia are elusive due in large part to the difficulty of determining the exact population of undocumented migrant workers in the country.

¹¹ Declaration by the Deputy Prime Minister Najib Razak, “Government acts to stem rising tide of illegal workers”, *The Star*, 11 August 2004.

agriculture and services. Following the 2002 mass deportations, serious labour shortages were experienced by the construction and plantation sectors, prompting the authorities to expedite new approvals for recruiting foreign workers for specified industries.

In Malaysia, the majority of those designated by the government as ‘illegal immigrants’ are migrant workers. They become ‘undocumented’ for various reasons: either because they enter Malaysia without proper documentation, or because they lose their legal status during their stay in Malaysia.¹² Many migrant workers work and live in inadequate conditions, without access to basic services and at risk of physical and sexual abuse.¹³ They are subject to weak recruitment regulations and limited legal protection and are vulnerable to exploitation by unscrupulous recruitment agents and employers.

2.2 Human rights of migrant workers

In light of the Malaysian government’s plans, Amnesty International recalls that all human beings, including so-called ‘illegal immigrants’, are entitled to respect for and protection of their fundamental human rights.

As a member of the United Nations, Malaysia has the duty to uphold the principles of the Universal Declaration of Human Rights (UDHR). The UDHR enshrines internationally recognised human rights, and many of its provisions are considered to be reflective of customary international law binding on all states. Among the rights provided for in the UDHR are that everyone has the right to life, liberty and security; to equality before the law without discrimination; to a fair and public trial; to the presumption of innocence; to freedom from torture and other cruel, inhuman, or degrading treatment or punishment; to freedom from arbitrary arrest, detention or exile and the right to a standard of living adequate for the health and well-being of her/himself and of her/his family, including food, clothing, housing and medical care and necessary social services.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (which came into force on 1 July 2003) outlines the human rights protections which all migrant workers, whether documented or undocumented, should receive. Under the terms of this Convention, migrant workers are entitled to protection of

¹² In Malaysia, migrant workers are constantly at risk of having their work permit terminated or their passport confiscated by their employer.

¹³ For example, for further information on the situation of female domestic workers, see “*Indonesia/Malaysia, Help wanted- Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia*”, Human Rights Watch report, July 2004.

their basic freedoms including the right to life; the right to freedom from torture; the right to due process including freedom from arbitrary arrest and detention; the right not to be subject to measures of ‘collective expulsion’; the right to medical care that is urgently required and the right of equal treatment - in comparison to nationals in the country - in respect to remuneration and other conditions of work, membership of trade unions and access to social services.

→ Amnesty International urges the Malaysian government to respect the fundamental human rights of migrant workers (whether documented or undocumented), ratify the Migrant Workers Convention, and implement effectively its provisions.

2.3 Risk of mass expulsion without access to fair procedures

In any case of mass expulsions there is a risk that the expulsion will be tainted with discrimination and arbitrariness, and will therefore be inherently unlawful. The collective nature makes it virtually impossible for the state to provide the necessary procedural guarantees and to ascertain whether among those expelled are some who are legally entitled to be in the country. Practice shows that, even in instances where a mass expulsion is purportedly aimed at undocumented migrants, legal residents or nationals, or both, can be caught up in such expulsions.

- In 2002, reports indicated that Malaysian nationals may have been deported along with undocumented migrants. A 13-year-old girl who was deported in August 2002, was originally thought to be from the Philippines. Further investigation showed she was a Malaysian citizen. She was reportedly raped in an immigration detention centre in Sabah state by three policemen.¹⁴

All migrant workers, including undocumented migrant workers, should be entitled to specific rights during expulsion,¹⁵ and should not be subject to mass or collective expulsion. Their rights include:

- The right to have his/her expulsion examined and decided individually;
- The right to have the decision communicated in a language he/she understands;

¹⁴ See Amnesty International 2003 annual report.

¹⁵ See the Migrant Workers Convention, Article 22, which provides an authoritative elaboration on the relevant rights in the context of expulsion. See also in this context, General Comment No. 15 by the Human Rights Committee to the ICCPR on “The Position of Aliens under the Covenant.”

- The right to submit the reason he/she should not be expelled;
- The right to have his/her case reviewed by the competent national authority (unless the final decision had already been pronounced by a judicial authority);
- The right to be provided a reasonable opportunity before or after departure to settle any claims for wages.

→ Amnesty International urges the Malaysian government to halt the planned mass deportation until it can guarantee that fair procedures are provided to undocumented migrant workers in the context of any process of expulsion. Fundamental human rights of undocumented migrant workers should be fully protected prior to and during expulsion.

3. Asylum-seekers and Refugees: at risk of arrest, detention, imprisonment and *refoulement*

3.1 Background

In 2003, the United Nations High Commissioner for Refugees (UNHCR) registered 15,000 new asylum-seekers in Malaysia. Most were from Chin and northern Rakhine States in Myanmar and from the Indonesian province of Nanggroe Aceh Darussalam (NAD), commonly known as Aceh.¹⁶ As Malaysia is not a party to the 1951 UN Convention Relating to the Status of Refugees nor to its 1967 Protocol, the Malaysian government has refused over the years to offer protection, including legal status, to refugees on its territory, instead designating all undocumented foreign nationals as ‘illegal immigrants’.

In a significant step forward, the Malaysian government announced in October 2004 its willingness to provide official identity documents to Rohingyas to allow them to work in Malaysia and to protect them from becoming caught up in the deportation process. Mohamed Nazri Abdul Aziz, Minister in the Prime Minister's Department, confirmed that identity documents will be provided to Rohingyas until the Government of Myanmar confirms their citizenship and stops ‘persecuting’ them. Procedures establishing how Rohingyas can obtain

¹⁶ UNHCR Global report 2003, “East Asia and the Pacific”, p. 370.

identity cards have yet to be announced and implemented.¹⁷ UNHCR estimates that there are about 10,000 Rohingyas currently living in Malaysia¹⁸.

The Malaysian government still denies legal protection to other groups of refugees, such as the Acehnese and the Chins¹⁹. Its position is strongly influenced by a desire to maintain a cordial relationship with neighbouring countries. Amnesty International reminds the Government of Malaysia that the grant of asylum has been explicitly recognized as a peaceful and humanitarian act, and should not be considered unfriendly by any other state.²⁰

- Thousands of Acehnese have escaped counter-insurgency operations or have migrated to neighbouring Malaysia for economic reasons over the years. Following the declaration of a military emergency on 19 May 2003 in NAD, the numbers of Acehnese fleeing in fear of violence and other human rights violations, including extrajudicial executions, torture and arbitrary detention are believed to have increased.²¹ UNHCR considers that the high-level of generalized violence in NAD places all Acehnese in Malaysia at potential risk of human rights violations if forced to return. Nevertheless, several hundred Acehnese are believed to have been returned since May 2003. In most cases, there is no information on their fate. However, Amnesty International is aware of recent cases where Acehnese were subjected to arbitrary detention on their return to NAD. An unconfirmed report indicates that an individual who returned was unlawfully killed.²²

3.2 Risk of arrest, detention and imprisonment

In pursuit of its protection mandate, UNHCR issues ‘Temporary Protection Letters’ (TPL) to some refugees. However, this documentation offers variable levels of protection during police identity checks in Malaysia. While in some cases the letter is accepted as a valid document establishing the status of the holder, in many others it is ignored, confiscated or destroyed by police officers, thus leaving the holders in a precarious situation. Although the Malaysian

¹⁷ “Daily says Malaysian minister confirms refugee status of Burma's Rohingyas”, *Malaysiakini*, 2 November 2004.

¹⁸ UNHCR “Rohingyas flock to UNHCR in Kuala Lumpur following Malaysia government pledge”, 9 November 2004.

¹⁹ Christian Chins are suffering human rights violations in Myanmar, including religious persecution.

²⁰ See *inter alia* UNHCR Executive Committee Conclusion No. 94 (LIII), 2002 on the civilian and humanitarian character of asylum.

²¹ Precise numbers are unknown.

²² See “*New military operations, old patterns of human rights abuses in Aceh [Nanggroe Aceh Darussalam]*”, AI Index: ASA 21/033/2004, Amnesty International, October 2004.

government recently said that refugees and persons of concerns for UNHCR would not be affected by the planned mass deportation of undocumented migrants, many asylum-seekers whether they are holders of TPL or not still feel at constant risk of arrest, detention, imprisonment and *refoulement*²³.

- In August 2003, around 260 asylum-seekers, including some from Myanmar and NAD were arrested outside UNHCR offices as they attempted to register for refugee determination. It was subsequently reported that the majority of them were deported.

In order to ensure that the right to seek and enjoy asylum from persecution as set out in Article 14 of the UDHR is respected, all asylum-seekers in Malaysia should have access to procedures for determining whether they are refugees. They should not be detained unless they have been charged with a recognizable criminal offence or for reasons recognized as being legitimate under international standards.²⁴

If they are detained, Malaysia should ensure that they are not inhibited in any way from pursuing asylum claims. Amnesty International welcomes the statement made in November 2004 by Mohd Bakri Bin Haji Omar, the Inspector General of Police in Malaysia, saying that “the Police will not stop any person who may be an illegal immigrant from seeking refugee status with the UNHCR”. However, the organization reminds the Malaysian government that a mechanism should be established to ensure that UNHCR is notified of the detention of all refugees and asylum-seekers on immigration grounds. UNHCR should be permitted access to these refugees and to all areas of immigration detention centres so that others have the opportunity to identify themselves and request protection. All refugees and asylum-seekers in detention should be provided with immediate access to competent legal counsel, as well as interpreters as necessary. In this context, the Immigration Act which regulates immigration issues in Malaysia should be revised to ensure that it cannot be applied to detain or imprison refugees or asylum-seekers.

²³ UNHCR briefing notes “Rohingyas flock to UNHCR in Kuala Lumpur following Malaysia government pledge”, 9 November 2004.

²⁴ UNHCR Guidelines state that the detention of asylum seekers is “inherently undesirable”. They further provide that the basis for detention of asylum-seekers and refugees should be to verify identity; to determine the elements on which the claim for refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum; or to protect national security or public order. See Conclusion No. 44 of UNHCR’s Executive Committee (EXCOM) and UNHCR’s Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-seekers of 1999.

As a result of the Malaysian government's plan to collectively deport undocumented migrants, Amnesty International is gravely concerned that in the absence of a formal mechanism granting access by refugees and asylum-seekers to UNHCR, significant numbers of asylum-seekers in Malaysia may not have full and free access to UNHCR for refugee status determination.

3.3 Threat of refoulement

The principle of *non-refoulement* prohibits the return in any manner whatsoever of any person to a situation where s/he is at risk of torture or other serious human rights violations. As outlined in Article 33 of the 1951 Convention Relating to the Status of Refugees and in numerous other international instruments, the principle of *non-refoulement* is widely regarded as a norm of customary international law and is binding on all states. All refugees, asylum seekers and undocumented migrants in Malaysia, should thereby be protected from *refoulement*.

According to Amnesty International's information, hundreds of asylum-seekers and refugees are currently held in immigration detention centres in Malaysia. At times, especially when mass arrests lead to severe overcrowding, conditions are reportedly so poor as to amount to cruel, inhuman or degrading treatment. Detention conditions which have the indirect effect of forcing people to return to a situation where they risk facing serious human rights abuses would constitute a 'constructive' *refoulement*, and is similarly prohibited by customary international law.

- In July 2004, approximately 60 asylum-seekers were arrested in Selayang, Selangor state. The majority of them were subsequently sent to Semenyih immigration detention centre, where a significant number of undocumented migrants are currently held prior to deportation. At least 20 of them have now reportedly 'voluntarily' repatriated to their home country. Amnesty International is concerned that some of them may have left due to prolonged detention in poor conditions.

→ Amnesty International urges the Malaysian government to put a halt to the current plans of mass expulsions, until it can guarantee that all refugee and asylum-seekers have full access to UNHCR for a fair determination process of their refugee claim and that the principle of *non-refoulement* is upheld.

4. The Immigration Act: risk of ill-treatment and lack of fair trial

“We want legal action to be taken against those arrested for not having proper documents, whether they are caught at random or during operations, before they are deported to the countries of their origin.”²⁵

The Malaysian government’s warning that they might prosecute - prior to deportation - suspected undocumented migrants who have not left during the “amnesty” period, implies a massive use of the 1959/63 Immigration Act (as amended).

Under this legislation, those who breach immigration laws in Malaysia face fines of up to 10,000 Malaysia Ringgit (US\$ 2,630) per offence, jail sentences of up to five years, or both, as well as whipping of up to six strokes with a rattan cane. In Malaysia, caning is used as a supplementary punishment for at least 40 crimes including in the Immigration Act, even though it constitutes a cruel, inhuman or degrading punishment and contravenes international human rights standards.²⁶ Under the Immigration Act, the police and immigration authorities are provided with wide powers to arrest, detain and eventually deport undocumented migrants.

4.1 The right to a fair trial

Amnesty International has received reports indicating that many defendants currently charged under the Immigration Act do not fully enjoy their right to a fair trial. Many defendants reportedly do not have access to a lawyer; are not fully informed of their rights under Malaysian law; do not have access to the outside world and are not fully aware of the charges they face. Amnesty International is gravely concerned by these reports which indicate that the right to a fair trial, including the right to be presumed innocent, the right to inform family of arrest or detention and place of confinement²⁷ and the right to legal counsel, is not fully respected. The right to a fair trial as recognized in the UDHR is part of customary international law and legally binding on all states.

²⁵ Declaration by Malaysia’s Deputy Prime Minister Najib Razak in relation to the government’s plan to deport more than one million “illegal immigrants.” “Illegals: Courts told to be efficient”, *Bernama*, 11 August 2004.

²⁶ Defendants who are older than 50 years of age are exempted from this form of punishment.

²⁷ Rule 92 of the Standards Minimum Rules for the Treatment of Prisoners.

→ Amnesty International remains unaware of any specific measures - including training of magistrates - which have been taken to ensure that Malaysian courts will be able to handle an increase of new cases in the context of the planned expulsions, while respecting the right to a fair trial. The organization believes the Malaysian government should take necessary steps to ensure that any defendants charged under the Immigration Act enjoy all aspects of their right to a fair trial.

4.2 Caning amounts to a cruel, inhuman or degrading punishment

Up to 18,000 ‘illegal immigrants’ are reported to have been caned in Malaysian prisons within the last two years, and another 16,900 are awaiting this punishment.²⁸ Following the 2002 mass deportation of undocumented migrants, Professor Mohammed Hamdan Adnan, in his capacity of Commissioner at the Human Rights Commission of Malaysia (*Suruhanjaya Hak Asasi Manusia Malaysia*, Suhakam), visited Semenyih detention centre and met detainees who had recently been caned.²⁹ He concluded that the government should reconsider caning as a penalty for undocumented migrants because it amounts to cruel and inhumane treatment.

The UN Human Rights Committee considers whipping and other forms of corporal punishment to constitute cruel, inhuman or degrading punishment and contrary to international human rights law.³⁰ The UN Committee against Torture has also called for the abolition of judicial corporal punishment³¹ and the UN Special Rapporteur on Torture has stated that ‘corporal punishment’ is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.³²

→ In line with Suhakam and the UN Human Rights bodies and experts, Amnesty International considers caning as a violation of the right to be free from torture and other cruel inhuman or degrading punishment, and calls on the Malaysian government to abolish this practice.

²⁸ “Malaysia faces rising problems of illegal immigrants”, *Channel News Asia*, 17 August 2004.

²⁹ “Suhakam: Whipping of illegal immigrants violates human rights”, *Malaysiakini*, 28 January 2003.

³⁰ *George Osbourne v Jamaica* (communication number 759/1997) UN Doc. A/55/40, pp. 133-139.

³¹ UN Doc. A/52/44, p. 250.

³² UN Doc. E/CN.4/1997/7, p. 6.

4.3 Risk of violations during arrests and detention by police and immigration officials

Amnesty International continues to have grave concerns that the legal and procedural safeguards protecting the rights of persons arrested and detained in Malaysia are insufficiently robust. Over many years the organization has received reports of a pattern of abuses by police involving ordinary criminal suspects, alleged undocumented migrant workers, and political protestors including those detained under the Internal Security Act (ISA).

Reports of human rights violations by police include excessive use of force and unlawful killings during arrests of criminal suspects; ill-treatment or torture in police 'lock-ups'; and deaths in custody. There have also been reports of periodic incidents of physical and sexual abuse by guards at Immigration Detention Centres, as described by former Bangladeshi migrant workers testifying during the trial of human rights defender Irene Fernandez.³³

Within this context, Amnesty International warmly welcomed Prime Minister Abdullah Badawi's initiative in January 2004 to set up a one year Royal Commission of Inquiry to recommend reforms enhancing the operation and management of the Royal Malaysia Police, and to address complaints of police abuses. The Commission is due to report in early 2005.

The Malaysian government is currently recruiting and training new members of the People's Volunteer Corps (*Ikatan Relawan Rakyat Malaysia*, RELA)³⁴ to assist the police to arrest and detain undocumented migrant workers. Some fear that it may lead to further abuses due to past problems with RELA members being 'overzealous', poorly trained and not being held accountable.

³³ Irene Fernandez was arrested and charged in 1996 following the release of a report on conditions in immigration detention centres. The report, published by the non governmental organization Tenaganita in 1995, provided details of alleged patterns of human rights violations in the centres, including beatings, sexual abuse and denial of adequate medical care. In 2000, former migrant workers from Bangladesh testified for the defence in the trial of Irene Fernandez and confirmed cases of torture and sexual abuse in immigration detention centres in 1994-1995. For more information please refer to "Malaysia: Irene Fernandez defends rights of migrants workers despite conviction", AI Index: ASA28/010/2004, Amnesty International, November 2004

³⁴ RELA is a voluntary program established in 1972 under the Interior Ministry to provide assistance to the security forces.

→ Amnesty International urges the Malaysian government to ensure that the Royal Malaysia Police, members of the People's Volunteer Corps and immigration officials are fully trained in human rights standards and will conduct arrests, detentions and deportations with due respect for human rights principles and the rule of law.

5. Inhuman or degrading detention conditions prior to and during deportation

“The truth is that detainees here only get a handful of rice with a small piece of salted fish, which is often rotten and smelly.”³⁵

5.1 Detention conditions in police lock-ups

Amnesty International has received reports indicating that conditions of detention in police lock-ups and immigration detention centres frequently may not comply with the UN Standard Minimum Rules for the Treatment of Prisoners, which sets minimum standards in the area of hygiene, clothing, bedding, food, medical services, and discipline.

Concerns in police lock-ups include overcrowding; lack of bedding and clothes for detainees; lack of access to safe water and poor hygiene and sanitation. In 2002, Suhakam recommended that the Lock-Up Rules 1953 be reviewed and brought up-to date in compliance with the UN Standard Minimum Rules for the Treatment of Prisoners.³⁶ Amnesty International urges the government of Malaysia to follow Suhakam's recommendations and abide by international standards.

5.2 Conditions in immigration detention centres

Amnesty International is gravely concerned by conditions of undocumented migrant workers held in immigration detention centres, especially at times when mass arrests and deportations

³⁵ Irene Fernandez, Director of the non governmental organization Tenaganita commenting on detention conditions at Semenyih immigration detention centre, “The ‘truth’ about detention camps”, Tenaganita, 14 September 2004.

³⁶ “Rights of remand prisoners”, Suhakam, 2002.

lead to severe overcrowding. Conditions in some immigration detention centres may be at times so poor as to amount to cruel, inhuman or degrading treatment.

As a state party to the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the Malaysian government has the duty to ensure that women, including those in detention, get appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.³⁷

Problems with conditions in immigration detention centres include:

- **Overcrowding:** Severe overcrowding has been reported in some immigration detention centres. Suhakam recognizes overcrowding as a major problem, which results in detainees having to sleep on bare floors with insufficient blankets and lack of proper clothing.³⁸ In 2003, during a visit to the immigration detention centre of Belantek in Sik, Kedah state, Suhakam Commissioners observed that although the centre's capacity was for 400 people, on the day of their visit there were 652 detainees housed in the centre. This constituted an actual inmate rate of one and a half times the centre's capacity.³⁹
- **Poor hygiene and sanitation:** At the immigration detention centre in Macap Umboo, Malacca, Suhakam described the building which was housing 260 men together as "*in a deplorable state and unhygienic due to an overflowing septic tank.*"⁴⁰ Detainees held in immigration detention centres are often not provided with basic provisions such as toothpaste, soap or washing powder. Reports indicate that women are not always provided with sanitary napkins.⁴¹
- **Health issues:** Poor conditions in immigration detention centres are reported to contribute to ill-health of detainees. Although there is some medical attention provided, this is believed not to be adequate. Suhakam reported that during a visit at Macap Umboo immigration detention centre, the health of the detainees and personnel were at risk due to a recent outbreak of meningitis.⁴² More recently, reports indicated that at Semenyih immigration depot, there were signs of beri beri and

³⁷ Article 12, Convention on Elimination of All Forms of Discrimination Against Women.

³⁸ Annual report 2002, Suhakam, p. 39.

³⁹ "Prisons department should take over management of more immigration depots", Suhakam, 22 September 2003.

⁴⁰ Ibid.

⁴¹ Irene Fernandez, "The 'truth' about detention camps", Tenaganita, 14 September 2004.

⁴² "Prisons department should take over management of more immigration depots", Suhakam, 22 September 2003.

diseases arising from malnutrition, and that due to overcrowding, there was an outbreak of chicken pox placing detainees at risk of developing pneumonia.⁴³

- **Inadequate nutrition:** Detainees reportedly had limited access to clean water, adequate milk for children and adequate nutrition in Semenyih detention centre.⁴⁴
- **Verbal and physical abuses:** Verbal abuse and threats to migrants or refugees by camp guards are commonly reported by detainees. Physical abuse, such as beatings, is reported to occur on some occasions.

Such conditions are contrary to provisions in the UN Standard Minimum Rules for the Treatment of Prisoners. Suhakam recommended that in order to improve the conditions of detainees in immigration centres, the authorities should transfer the daily running of detention centres to the Prison Department. The main immigration centres of Semenyih, Lenggeng, Macap Umboo, Langkap and Pekan Nanas are now all reported to be under the Prisons Department. Although Suhakam and others were optimistic that conditions would improve as a result, deterioration of detention conditions are reported to have been among the reasons for a hunger-strike by detainees in Semenyih in early September 2004.⁴⁵

5.3 Children

In 2002, reports indicated that the process of mass deportations of undocumented migrants led to the deaths of children, due to dehydration and disease in detention centres in the state of Sabah.⁴⁶ Amnesty International is gravely concerned by these reports and urges the Malaysian government to ensure that such incidents will not occur again and that children will be provided with adequate medical care and nutrition while in Malaysia.

- On 17 July 2004, seven Acehnese refugees, including three children, were reportedly detained in the Jalan Hang Tuah police station in Kuala Lumpur. Reports indicate that the three children were detained for five days along with 20 adults, some of whom were believed to be drug-addicts. The children were reported to have been given food which was stale, and had no option but to drink unsafe tap water. Due to lack of

⁴³ See footnote 39.

⁴⁴ Ibid.

⁴⁵ The hunger strike ended on the third day following promises by Malaysian authorities to improve access to medical care and basic conditions of the detention centre. "Semenyih inmates end hunger-strikes after three days", *Malaysiakini*, 8 September 2004. Conditions are reported to have since improved partly due to less overcrowding, renovation of toilets and increase access to water supplies.

⁴⁶ "Philippines asks Malaysia for moratorium on deportations", *Agence France Presse*, 31 August 2004.

proper food, clean water and lack of sleep, they became ill. However, it was alleged that requests for medicine by the family was rejected.⁴⁷

As a state party to the Convention on the Rights of the Child (CRC), Malaysia has a duty to ensure that detention of children is used only as a measure of last resort and for the shortest appropriate period of time. Malaysia should also take all appropriate measures to ensure that children who are detained are treated in accordance with the needs of people of their age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. Like adults, all children who are detained in police lock-ups or immigration detention centres, have the right to be examined by a doctor and, when necessary to receive medical treatment free of charge.⁴⁸ Torture and other cruel, inhuman or degrading treatment of children, as of adults, is absolutely prohibited.

→ In accordance with international standards, Amnesty International believes the Malaysian government has a duty to ensure minimum standards for conditions of detention and imprisonment, including the right to adequate medical care and the right not to be subjected to ill-treatment or torture.

5.4 Conditions during deportation operations

Amnesty International is aware that in 2002 overcrowding and poor sanitary conditions during the process of deportation may have led to illnesses and deaths of undocumented migrants both in the country and outside⁴⁹. The organization urges the Malaysian government to take appropriate measures to ensure that these violations will not take place again. In particular Amnesty International urges the Malaysian government to take measures to ensure that during deportation operations all deportees are provided regularly with adequate and safe food and water, have ready access to sanitation facilities and are treated with respect for their human dignity.

⁴⁷ "Five harrowing days in lock-up for refugees", *Malaysiakini*, 23 July 2004.

⁴⁸ The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 24.

⁴⁹ It is reported that in 2002, tens of Indonesians died in the city of Nunukan, at the border with the Malaysian state of Sabah, after being deported from Malaysia and while waiting to be transported to their home town in Indonesia. The deaths were reportedly due to inadequate nutrition and lack of medical care in temporary Indonesian shelters.

6. Recommendations

Amnesty International urges the Malaysian government to take the following steps:

1. Halt the current plans for mass deportations and ensure that measures are taken to ensure that the fundamental rights of both documented and undocumented migrant workers are respected in any expulsion process. Ratify the UN International Convention on the Protection of All Migrant Workers and Members of their Families, the Convention against Torture and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
2. Ensure that any person whose expulsion is being considered has her/his case individually examined in a fair and transparent procedure where s/he has the possibility to submit reasons against expulsion and has the possibility to have her/his case reviewed should an initial decision be negative;
3. In accordance with the fundamental principle of *non-refoulement*, put a halt to the current plans of deportations until it can be guaranteed that all those seeking asylum have full access to a fair and satisfactory procedure to determine their refugee status; ensure that no one is returned to a country where s/he is at risk of torture and other forms of ill-treatment and that all those seeking asylum have full access to the UNHCR;
4. Take measures to ensure that arrests and deportations by the Royal Malaysia Police, members of the People's Volunteer Corps and immigration officials are conducted with due respect of human rights and the rule of law, and ensure that all complaints of abuse are promptly, independently and impartially investigated;
5. Ensure that all prosecutions of undocumented migrants will be conducted with full respect for international human rights law, most notably the right to a fair trial, including taking specific measures to ensure that defendants are brought promptly before a judicial or similar authority and that they are able to communicate with the outside world;
6. Repeal caning as a judicial punishment, including under the Immigration Act, and ensure that neither migrants nor asylum-seekers and refugees will face corporal punishment under immigration laws;
7. Ensure that conditions in police lock-ups, prisons and immigration detention centres are consistent with the UN Standard Minimum Rules for the Treatment of Prisoners, including access to adequate food and water and medical attention, and that independent monitors, including the UNHCR and Suhakam, are provided access to the detention centres. Adequate detention conditions should be provided at all times including prior to and during any individual expulsion process;

8. Take measures to ensure that any child and woman detained be granted appropriate protection as required by the UN Convention on the Rights of the Child, and the UN Convention on Elimination of All Forms of Discrimination Against Women, to which Malaysia is a party.