



**ASEAN PARLIAMENTARIANS
FOR HUMAN RIGHTS**

Examining Human Rights in the Context of ASEAN Regional Migration

**Summary Report of Findings from
APHR Fact-Finding Mission to Malaysia
*3-7 August 2017***

ASEAN PARLIAMENTARIANS FOR HUMAN RIGHTS (APHR)

is a human rights intervention force of current and former parliamentarians from Southeast Asia, who use their unique positions and innovative means to prevent discrimination, uphold political freedom, and promote democracy and human rights throughout the region. APHR supports the work of civil society and human rights defenders and encourages sustainable solutions that increase pressure on governments and multilateral bodies to ensure accountability and uphold and enforce international human rights laws.



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Introduction

ASEAN Parliamentarians for Human Rights (APHR) recently concluded a fact-finding mission to Malaysia to examine the situation of human rights in the context of intra-regional migration in Southeast Asia. The delegation, which included current and former lawmakers from Cambodia, the Philippines, Singapore, and Thailand, traveled to Kuala Lumpur from 3 to 7 August 2017 and met with a wide variety of stakeholders in government, the private sector, and civil society.

As ASEAN's regional integration effort proceeds, the movement of people across borders for a variety of reasons is increasing, and migration has remained intrinsically tied to economic development region-wide. Given this context, APHR sought to gain a clearer understanding of the situation for migrant workers, refugees and asylum seekers, and victims of human trafficking, and the challenges they face.

Malaysia was chosen as a case study, in part, because it represents the largest net receiving country of migrants and refugees in Southeast Asia. During the course of the mission, participants examined the national and regional policies that impact the lives of migrants, refugees, and others in order to inform decision-making to promote and protect their human rights.

Below is a summary of the delegation's observations from the visit and recommendations for how Malaysia, other regional governments, and ASEAN as a whole can best address some of the main concerns identified.

Migrant Workers

ASEAN is home to millions of migrant workers, but relatively few protections exist at the domestic or regional levels to safeguard their rights. ASEAN collectively lacks a master plan or comprehensive regional approach for addressing this issue, and ASEAN governments have yet to agree upon a set of common principles for sending and receiving countries. As a result, migrant workers, both documented and undocumented, face widespread abuse and exploitation region-wide.

In Malaysia, some 1.9 million documented migrant workers, along with between 2 and 6 million undocumented workers, working in sectors including construction, manufacturing, hospitality, agriculture, and domestic work, face a host of challenges.

Workers APHR met with in Malaysia reported being made to work long hours in difficult or dangerous conditions. Construction workers spoke of having to work overtime and on their days off in order to make enough to live and send remittances home, in large part due to the fact that there is no legally-mandated minimum wage for migrant workers in Malaysia.

The living conditions the delegation encountered on a visit to a temporary settlement for construction workers from Indonesia and Bangladesh were exceedingly poor, composed almost entirely of cramped, overcrowded metal containers. The delegation understands that this is typical for many workers in similar sectors. The majority of the workers at the site reported working six or seven days a week, for 10 or more hours a day. Their employer provides only the housing structures and water, while workers, with their meager wages, are required to pay for their own food, cookware, mattresses, and other essentials.

“The construction industry is a last resort for those looking for employment in Malaysia. It is too dangerous and the conditions are too difficult.”

– Indonesian construction worker

The delegation also met with several current and former domestic workers from the Philippines and Cambodia. In addition to gender discrimination, domestic workers face particular challenges in Malaysia as they are excluded from basic labor protections under Malaysia’s Employment Act. As a result of their lack of legal protections, many report being mentally and physically abused by their employer, as well as being overworked and underpaid. Living in their employers’ homes, their isolation often prohibits them from

reaching out to fellow workers, NGOs, or their embassies for help.

Many of the abuses against migrant workers in all sectors stem from Malaysia’s lack of a comprehensive policy regarding migrant labor, resulting in a series of ad hoc policies that are subject to sudden changes and are not always consistent with one another.

“I thought, if I run away, where will I go? What will happen to me?”

– Cambodian former domestic worker

Responsibility is technically split between the Ministry of Home Affairs (MoHA) and the Ministry of Human Resources, but the former plays a dominant role, a fact which was repeatedly referenced in meetings as a key impediment to securing more protections for workers. MoHA’s approach to these issues, confirmed in a private meeting with Deputy Minister Nur Jazlan Mohamed as well as through numerous public statements from officials, focuses on national security and border control, rather than on protection or the needs of workers and employers.

These concerns were especially prevalent in the context of the crackdown on undocumented migrants in Malaysia, which began on 1 July following a months-long drive to register workers, and continued through APHR’s visit.¹ Workers the delegation spoke with expressed a significant lack of trust in the system and in the government’s intentions behind registering undocumented workers.

Civil society organizations and employers also noted that the current policies have failed to take into account the realities on the ground, including those of the labor market. It is clear that the securitization of migration and recurring immigration raids on migrant communities have resulted in widespread erosion of trust in the Malaysian authorities. These concerns were relayed by the delegation to Deputy Minister of Home Affairs Nur Jazlan Mohamed.

Immigration raids and associated policies are particularly problematic given the rampant practice of employers withholding passports or failing to renew work permits and visas, which leaves migrant workers vulnerable to arrest and detention when unable to produce proof of status in Malaysia. Stakeholders repeatedly noted that many workers who initially arrive in Malaysia documented find themselves undocumented, by no fault of their own.

¹ APHR, “ASEAN lawmakers express concerns over ongoing crackdown against undocumented migrants in Malaysia,” 12 July 2017, <http://aseanmp.org/2017/07/12/asean-lawmakers-express-concern-over-ongoing-crackdown-against-undocumented-migrants-in-malaysia/>.

Migrant workers who are rounded up in immigration raids or otherwise found without documentation, are sent to immigration detention centers, which have become notorious for their extremely poor conditions, as well as recent reports of high rates of deaths in custody, which APHR commented on previously.² During the mission, the delegation was told by the Human Rights Commission of Malaysia (SUHAKAM), which monitors conditions in detention centers, that problems of overcrowding, health, and hygiene have only gotten worse since the beginning of the crackdown on 1 July.

Almost universally, stakeholders also expressed a need for sending countries to play a greater role in addressing abuses against migrant workers, which often begin at home. Sentiments regarding the negative role of recruitment agents and middlemen were shared by civil society, employers, parliamentarians, and migrants themselves. Concerns were raised regarding recruitment agents charging exorbitant fees for routine components of the process, including documentation and medical checkups.

The delegation also learned of workers being lied to by agents regarding the nature of their work abroad, and workers who APHR spoke with directly reported being given, upon arrival in Malaysia, different contracts than the ones they signed in their countries of origin. In many cases, fees charged by agents leave workers deep in debt, resulting in many having no choice but to stay in their place of employment, regardless of how bad conditions may be. Although there is clear agreement on these points and the need to reign in abuses by middle men and recruitment agents, APHR remains concerned that large-scale corruption in both sending and receiving countries prevents this problem from being effectively addressed.

Based on conversations with stakeholders, it is clear that many embassies in Malaysia are also failing their citizens, proving unhelpful in securing documents to repatriate workers and get their citizens out of detention centers. They are also reported to discourage their citizens from pursuing legal redress against employers who have abused their rights.

Stakeholders highlighted that the lack of protection for migrant workers in Malaysia is facilitated by a lack of pressure from sending countries to improve the legal and policy framework. Stakeholders expressed particular concerns about the bilateral memorandums of understanding (MoUs) that are signed between Malaysia and sending countries, which often do not provide sufficiently clear guidance in the areas of salaries, hours of work,

² APHR, "Regional parliamentarians concerned about reported deaths in Malaysian immigration detention facilities," 3 April 2017, <http://aseanmp.org/2017/04/03/regional-mps-concerned-reported-deaths-malaysian-immigration-detention-facilities/>.

rest days, and other matters. Additional concerns were raised over the fact that negotiations over these MoUs are not transparent, and that the final documents are not made public, often falling under Malaysia's Official Secrets Act.

A recurring concern is the lack of protection for migrant workers at the regional level. Among ASEAN member states, only Indonesia and the Philippines have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, while Cambodia has signed but not ratified the treaty.

In 2007, ASEAN adopted a regional Declaration on the Protection and Promotion of the Rights of Migrant Workers, which calls on both sending and receiving countries in Southeast Asia to protect migrant workers and ensure that their rights are not abused. However, from conversations with multiple stakeholders, it is clear that this Declaration has had little impact on the ground. One of the Declaration's pitfalls is its exclusive focus on documented migrants, which leaves the door open for significant abuse of undocumented workers.

The delegation spoke at length with stakeholders about the ongoing negotiations at the regional level to develop a binding instrument to protect the rights of migrant workers, as mandated by the Declaration. Many of the stakeholders expressed concerns that the final product would be only 'morally binding' and would exclude from its protections undocumented workers, families of migrant workers, and workers from outside the ASEAN region. Such decisions would result in a treaty that would fail to adequately protect all migrant workers.

Based on these conversations and meetings held with affected communities, as well as additional examination of the relevant policy issues, the delegation concluded that it is important that the instrument not only be legally binding, but cover all migrant workers and their families, regardless of their legal status or country of origin.

Preliminary Recommendations

- Amend Malaysian domestic law to provide minimum labor protections to all workers in the country, including domestic workers and other migrant workers, in the areas of minimum wages, working hours, rest days and holidays, health insurance, workplace safety measures, and right to redress;
- Ensure that policies concerning migrant workers are undertaken in the context of labor policies and by relevant ministries, and not by immigration and security departments;
- Adopt a standard MoU and employment contract to be used by ASEAN member states when negotiating bilateral agreements between receiving and sending countries;
- Ensure that negotiations over bilateral agreements and MoUs are transparent and inclusive of all stakeholders and that final documents are made publicly available;
- End the practice of using private, for-profit middlemen in the processes of recruitment and management of migrant workers and ensure that recruitment is undertaken on a bilateral, government-to-government, basis;
- Ensure embassies of sending countries are sufficiently staffed and equipped to provide assistance to their citizens; and
- Adopt a regional, legally binding treaty that covers both documented and undocumented migrant workers, members of migrant workers' families, and workers from outside the ASEAN region.

Refugees & Asylum Seekers

Meetings with refugee communities during the mission provided an important window into the challenges faced by those seeking asylum in Malaysia. These individuals described their precarious position due, in large part, to the lack of legal recognition of their status as asylum seekers and refugees in the Malaysian legal system. In practice, the delegation was told, this means that these people are considered as undocumented migrants, rendering them extremely vulnerable.

Refugees are unable to work legally, enroll their children in public schools, or access subsidized health care. Given that the great majority of refugees in Malaysia, including those APHR met with, are 'urban refugees,' as opposed to those living in refugee camps, they receive little to no assistance.

The delegation had the opportunity to speak with top officials from the UN Refugee Agency (UNCHR) about the refugee registration program it operates in Malaysia, which provides UNCHR identification cards to individuals who are deemed to have legitimate asylum claims. These officials relayed to APHR the particular issues they face in Malaysia with regards to refugee registration, including their precarious position in the country given Malaysia's failure to ratify the 1951 Refugee Convention.

One of the biggest issues, based on conversations with refugees and groups who work with them, appears to be the slow pace of registration of asylum seekers by UNCHR. The delegation heard from refugees directly about their experiences with the process, in which it is not uncommon for individuals to wait months, or even years, to obtain just the first interview with the agency – only the first step in a long-process to be identified as a refugee. In the interim, asylum seekers are particularly vulnerable to immigration raids and arrests, and frequently end up detained in facilities, whose notoriously bad conditions are described above.

“As refugees in Malaysia, we don't have a voice. We need you to speak up for us.”

- Rohingya refugee in Malaysia

While the card itself is meant to provide some degree of protection from harassment by law enforcement, refugees told the delegation that it is not always effective. The card is also meant to secure a 50 percent discount at government-run health facilities, but many reported being discriminated against, and that even with the discount, they are often unable to fund all of their medical expenses.

Stakeholders the delegation spoke with during the mission, including representatives from several different refugee communities, highlighted a noticeable lack of cooperation between government agencies, UNCHR, and refugee community groups. All seem to have a different understanding of UNCHR refugee status determination procedures in Malaysia, which leads to frustration on the part of affected communities and contradictory policies on the part of the government. There also appears to be a significant difference in the approach to Malaysia's refugee population. While UNCHR seems focused on registering refugees in order to give some degree of protection, based on the delegation's interactions with officials, the government appears solely interested in registering them for the purposes of identification and national security.

The Malaysian government recently launched a new registration program, which will collect biometric data of asylum seekers at all stages of the UNHCR registration process. Based on discussions with government officials and other stakeholders, however, it appears that this government-led registration program will not result in any form of benefits or protection mechanisms for asylum seekers, and will not replace the UNCHR registration process and card.

Throughout the region, asylum seekers and refugees face a host of similar problems, primarily due to the lack of protection mechanisms at the national and regional levels. Of the 10 ASEAN member states, only Cambodia and the Philippines have ratified the 1951 Refugee Convention. However, in the eyes of many stakeholders, this lack of formal international legal commitments should not be seen as an insurmountable impediment to protecting refugees.

“The reality is that ASEAN must take care of its own refugees. The international community, including the US, won't do it. This is the uncomfortable truth.”

– Stakeholder working in the field of refugee protection in Malaysia

Many stakeholders raised the regional experience of ASEAN countries taking in and resettling refugees from Vietnam and Cambodia in the 1970s and 1980s, despite a similar dearth of legal obligations at that time. This history illustrates how regional governments not only have protected refugees in the past, but also how they can continue to do so now. One member of the delegation, a former refugee himself, was reminded of his own experience in conversations with refugees in Malaysia, further emphasizing the lessons that can be learned from previous experience and best practices.

The delegation met with several different groups of refugees from Myanmar currently in Malaysia, who emphasized the need for a resolution to the internal conflicts in Myanmar that are not only continuing to cause refugees to flee the country but also preventing many from returning. While UNHCR officials expressed confidence that certain groups of Myanmar refugees would be able to be voluntarily repatriated within a short timeframe, refugees the delegation spoke with did not feel that the situation in Myanmar was conducive to their return. In particular, repatriation is not currently an option for Rohingya refugees from Myanmar, who face government-sponsored persecution at home, and whom the Myanmar government does not recognize as citizens.

Preliminary Recommendations

- Ratify the 1951 Refugee Convention and additional protocols;
- Amend domestic legislation to provide official and legally protected status to asylum seekers and refugees;
- Implement policies to provide basic services and protection to asylum seekers and refugees;
- Coordinate regional responses to the refugee population in Southeast Asia; and
- Engage in advocacy at the regional level to push Myanmar toward the pursuit of reconciliation, democratization, and inclusive development, and support the implementation of the recommendations of the final report of the Advisory Commission on Rakhine State, in order to address root issues linked to refugee flows in ASEAN.

Human Trafficking

The problem of human trafficking in ASEAN is deeply connected to the movement of people for labor reasons and of refugees and asylum seekers, and the issue was repeatedly raised as a concern in conversations with stakeholders during the mission. CSOs that APHR met with emphasized the fact that many migrant workers and refugees arrive in Malaysia via trafficking channels, and that these people, despite being considered illegal migrants by the authorities, are victims in need of greater protection, both in Malaysia and in source countries.

An estimated 1.6 million people are trafficked within ASEAN each year. Based on data from the International Organization for Migration (IOM), in 2015, 95 percent of trafficking victims had been subjected to forced labor, while 7 percent had been trafficked for purposes of sexual exploitation. Malaysia is primarily a destination country for men, women, and children subjected to forced labor, and a smaller number of women and children subjected to sexual exploitation.

Prior to its fact-finding mission, APHR noted that the US State Department's 2017 Trafficking in Persons (TIP) report had upgraded Malaysia from the Tier 2 Watchlist to Tier 2. During meetings with stakeholders in Malaysia, many expressed skepticism about the upgrade and felt it was unwarranted, particularly given the lack of sufficient investigations and convictions in cases of trafficking.

Stakeholders highlighted the 2015 migrant crisis in Southeast Asia and the discovery of mass graves along the Thai-Malaysian border, which APHR commented on at the time.³ While APHR welcomed the trafficking prosecutions that were subsequently undertaken in Thailand, it noted that the lack of adequate investigations and prosecutions, especially of officials, on the Malaysian side was an issue that should have precluded Malaysia from being upgraded in the TIP report.

Embassies in Malaysia were reported to be often unhelpful or unprepared to handle the repatriation of victims of trafficking. APHR learned that many embassies are unable to provide shelter or other basic services to victims, leaving that responsibility to NGOs, whose resources are already stretched thin.

³ APHR, "ASEAN Parliamentarians: Horrific discoveries in southern Thailand further demonstrate the need for regional action," 8 May 2015, <http://aseanmp.org/2015/05/08/asean-parliamentarians-horrific-discoveries-in-southern-thailand-further-demonstrate-the-need-for-regional-action/>.

During discussions with stakeholders, the delegation also learned that trafficking of children for purposes of sexual exploitation is reported to be on the rise in Malaysia, along with the number of child begging syndicates in the country. Stakeholders mentioned that the South China Sea and the Straits of Malacca remain hot beds of trafficking, and that people continue to be regularly rescued from slavery on fishing boats, while regional governments have taken no strong action. Significant concerns were also raised about the situation of children of these fishermen, who are raised on the sea.

At the regional level, the delegation was heartened to learn that ASEAN has taken steps to address trafficking through legally binding measures. In November 2015, ASEAN member states adopted the ASEAN Convention Against Trafficking in Persons (ACTIP), which came into effect in March 2017 after ratification by six member states: Cambodia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

The delegation welcomes the entry into force of the Convention but remains concerned, based on conversations with stakeholders in Malaysia, about the commitment of regional governments to its implementation. Stakeholders highlighted that, throughout the region, inconsistent enforcement of legislation remains a problem, and many victims are left unrecognized or treated as illegal immigrants or criminals. From discussions held during the mission, it is also clear that human trafficking cannot be addressed at the regional level effectively without addressing the issue of protection for both refugees and migrant workers.

Preliminary Recommendations

- Ensure that all victims of trafficking are afforded access to justice, redress, and repatriation;
- Ensure that the ASEAN Convention Against Trafficking in Persons (ACTIP) is fully implemented and that appropriate monitoring mechanisms are put in place in order to ensure compliance with the provisions of the treaty; and
- Implement domestic legislation that complies with the provisions of ACTIP.

Conclusion

Many of the issues raised by various stakeholders during the mission are not unique to Malaysia, but rather trans-boundary problems that cannot be addressed solely at the national level. While the delegation learned of many ways in which the Malaysian government could take concrete action and steps to provide greater protections to migrant workers, asylum seekers and refugees, and victims of trafficking, the delegation concluded that the need for coordinated regional action to address these issues is of primary importance. Such regional action should consist of, first and foremost, ASEAN taking an active role, helping and encouraging individual governments to coordinate and act across borders to ensure that the rights of all the region's inhabitants are promoted and protected.

Annex 1 – Participants

- **Hon. Teddy Baguilat**, Member of the House of Representatives of the Philippines
- **Hon. Emmi De Jesus**, Member of the House of Representatives of the Philippines
- **Hon. Seng Mardi**, Member of the Senate of Cambodia
- **Hon. Kasit Piromya**, former Member of the Thai Parliament
- **Hon. Yeo Guat Kwang**, former Member of the Parliament of Singapore

Annex 2 – Stakeholder Meetings

- Civil society organizations working on the areas of human rights protection, migrant workers, human trafficking, and asylum seekers and refugees, including: Tenaganita, North South Initiative, Committee for Asian Women, the Right to Redress Coalition, SUARAM, and Amnesty International Malaysia
- Migrant workers from the Philippines, Cambodia, and Indonesia
- Community-based refugee organizations
- The Malaysian Bar Council
- The UN High Commissioner for Refugee (UNHCR) in Malaysia
- The International Labour Organization (ILO) in Malaysia
- The Malaysian Employers Federation
- The Human Rights Commission of Malaysia (SUHAKAM)
- Members of the Malaysian Parliament
- The Malaysian Ministry of Home Affairs

