

# TRAPPED

THE EXPLOITATION OF  
MIGRANT WORKERS IN  
MALAYSIA

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## EXECUTIVE SUMMARY

**“We worked for 12 hours per day, seven days per week without any rest day and overtime payment as stated in the employment contract. Any rest day that we have taken will be considered as unpaid leave or absence.”**

-- Bangladeshi migrant worker in Malaysia

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.



**“We went over to the police and asked for help.... We discovered that this officer and the traffickers were friends.... So, then we were trying to escape from the police and the traffickers at the same time.”**

**– Burmese migrant worker in Malaysia**

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.

**“He said, can you come and bring two cups and sit here and spend some time with me? Then, he poured me whisky and put something in it. I didn’t want to drink it, but did, and after, I vomited and went into my room. Then, my employer went in and took my clothes off and raped me.”**

**-- Indonesian domestic worker in Malaysia**

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.

*“They... removed all my clothing except for a small piece of cloth to cover my penis.... 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 because of the pain.”*  
-- caned Burmese migrant worker in Malaysia



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.

## RECOMMENDATIONS TO THE GOVERNMENT

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 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.







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