

Short Report on the Follow-up Meeting

to the

National Consultation on the Health Dimensions of Human Trafficking and Forced Labor: The Malaysian Experience and Response



**Kuala Lumpur, Malaysia
25 August 2011**



The Malaysian Bar Council

**health
equity
initiatives**



Malaysian Trades Union Congress

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Introduction

On 26 July 2011, Health Equity Initiatives, the Malaysian Bar Council and the Malaysian Trades Union Congress co-organized a National Consultation on the Health Dimensions of Human Trafficking and Forced Labor: The Malaysian Experience and Response.

The National Consultation was attended by government representatives, civil society, professional bodies as well as migrants and refugees, and it proved to be an important opportunity to examine the impact human trafficking and forced labor have on migrants' and refugees' lives in Malaysia. In particular, the National Consultation drew attention to the serious health problems associated with trafficking and forced labor and the need to focus on forced labor to be effective in addressing human trafficking in improving the protection environment for survivors in Malaysia. During the course of the one-day Consultation, key areas for further attention and action were identified by speakers and participants ("Summary of the Issues Raised").

To build on the momentum created by the National Consultation, and expand the space for further dialogue and mobilization, the Consultation co-organizers held a half-day Follow-Up Meeting on 25 August 2011 for the Consultation Participants. The primary objectives of the Meeting were to 1) identify key priority issues (from among the issues identified at the National Consultation); and 2) decide on related activities for the next year (Sept. 2011 – Sept. 2012). Nineteen participants attended the Follow-Up Meeting (see Annex 1), which was hosted by the Malaysian Bar Council.

Opening Remarks

Ng Tze Yeng, Acting Executive Director of Health Equity Initiatives (HEI), opened the meeting. She thanked those who came and welcomed them on behalf of the other co-organizers, the Malaysian Bar Council and the Malaysian Trades Union Congress (MTUC). She explained that the meeting was a follow-up to the National Consultation on the Health Dimensions of Human Trafficking and Forced Labor: The Malaysian Experience and Response. She explained the objectives of the meeting: 1) to prioritize issues raised in the National Consultation on 26 July 2011; and 2) to choose activities to work on collectively in 2012. She mentioned that one person would be assigned to each of the areas of health, labor and legislation in relation to forced labor and human trafficking. These persons would be the focal points for the coordination between the organizations. She ended her remarks by wishing everyone a good and fruitful meeting. This was followed by a round of introductions among the participants.

Discussion of the Key Issues

David Victor (chair of the session, Malaysian Bar Council) from the Malaysian Bar Council explained that he was sitting in for Dato' Ramachelvam who was unable to attend the meeting. He opened the discussion by explaining that three priority areas needed to be decided upon by the group, and that this should lead to the development of a plan of action.

Michelle Reining (HEI) then reviewed the issues that arose from the National Consultation on 26 July 2011.

Mr. Victor then asked participants to share their thoughts and perspectives on the key issues, and Michelle added that it would be useful for participants to share the issues that they or their organizations were currently working on, as a way to build on what is already being done.

Sharuna Verghis (HEI) said that HEI is not an organization that works specifically on issues of the law (HEI primarily focuses on health), but there are certain aspects of the Anti-Trafficking in Person (ATIP) Act that are of concern. She highlighted that there were gaps and concerns in the law in relation to health and psycho-social assistance for victims. Given the complex health issues faced by survivors this issue needed attention. A second issue mentioned by Ms. Verghis is that the path to human trafficking is through forced labor. This is especially for refugees who lack the legal status and access to legal mechanisms to pursue redress for labor violations. This creates the vulnerability to forced labor. This aspect is not emphasized enough in the current the discourse on human trafficking. She added that if the Malaysian government wants to improve the effectiveness of their anti-trafficking efforts, they must implement labor protections for migrants and refugees that are in line with the ILO Conventions Malaysia has ratified.

Vizla Kumaresan (HEI) then talked about HEI's work with the government run shelter for trafficked persons that was supported and facilitated by the International Organization for Migration (IOM), which includes mental health assessments of residents, and trainings for the care providers to address the mental health of residents and care providers.

Mr. Victor (Bar Council) asked about the mental health of refugees to which Ms. Kumaresan shared that many refugees accessing HEI's services showed symptoms of Depression and Anxiety. Much of their mental health distress is due to their poor economic condition, lack of clarity about their future, their legal status in Malaysia, and UNHCR registration and resettlement issues. Another issue that causes distress is the lack of information about their legal cases. Ms. Verghis added that mental health distress is also related to indebtedness. A current concern at the government run shelters is the lack of budget for psychological services and programs. This issue needs more attention.

The next point raised was the proper identification of survivors of trafficking. Ms. Reining believed that the government did have some identification guidelines or tools, but they were unavailable to the public. Ms. Verghis mentioned that an examination of the ATIP found that it is based on the UN Anti Trafficking Protocol for which victim identification relies on border control measures and the role of immigration officers. There should be an increased focus on the element of exploitation as an indicator of trafficking in addition to other measures.

Sumitha Shaanthinni (Malaysian Bar Council) said that once a person has been rescued, s/he is brought to court, given an Interim Protection Order (IPO) and sent to a government shelter. The Investigating Officer (IO) must interview the victim to find out if s/he is really a victim. S/he is then brought to court and given a Protection Order (PO) that is renewed every 3 months until the case is heard. There is concern that the IOs are not sufficiently trained to identify victims. This is exemplified in the evidence gathering which affects the cases in court as not enough evidence is secured against the traffickers.

Mr. Victor (Malaysian Bar Council) highlighted his concerns for migrants arriving in Malaysia on their own initiative, who are not considered trafficked but fall into forced labor situations.

Ms. Shaanthinni (Malaysian Bar Council) responded that people can be trafficked from their country of origin or they can be trafficked within a country. She said that they are often falsely led to believe they have secured a decent job opportunity. Another participant added that agents promise jobs and high pay and encourage migrants to come on social visas. They then become undocumented when their visas run out.

The MTUC representative referred to the speaker from the Labour Department at the National Consultation who had stated that cases involving three months of unpaid wages would be categorized as forced labor. As such, last year a group of Indonesian domestic workers who were not paid their wages were taken to a government shelter. Moving forward, it will thus be strategic to collaborate with the Labor Department on the issue. Ms. Moses (MTUC) said that MTUC is in touch with the Labor Attaché on the case, and the Indonesian Embassy was taking it up.

The next issue raised was that of refugees and asylum seekers being granted work permits. Ms. Shaanthinni (Malaysian Bar Council) said that UNHCR indicated that the IMM13 status revokes refugee status as they will be regarded as migrant workers, thus we need to be mindful on whether a refugee loses their refugee status when they are incorporated into the national system. For countries that are not a signatory to the Refugee Convention, there is a possibility of enacting a separate Refugee Act in order for refugees to be allowed to work; as such is the case in North Korea.

Mr. Renato Villa (Philippines Embassy) said that the Malaysian government in Sabah seems to have provided some services and considerations to refugees. He highlighted that over 80,000 Filipino Muslims were given IMM13 status, and their descendants were given refugee status. Some have now been given Permanent Residence (PR) and even citizenship. He mentioned that there were some political considerations in the exchange, and they were allowed to work, but only within Sabah. The IMM13 status could be considered as an avenue for exploration to enable refugees and asylum seekers to work in Malaysia.

Considering all the issues that needed to be addressed, Ms. Verghis mentioned that government shelters and assessments are only one dimension of the problem. There must be a broader and collective response on the issues of trafficking and forced labor. She suggested that it may be better to look at the legal reforms and advocate for additional policies. These policies include those directly linked to trafficking and also issues of refugee protection. She also suggested looking at labor issues as well as related health concerns. On the issue of health, she added that it would be good to look at the protections that are in place and those that still need to be developed.

Mr. Villa (Philippines Embassy) finished the session by saying that the prosecution efforts need to be strengthened as typically, the traffickers have veteran lawyers. This is compounded by delays in the justice systems and the shelter residents wanting to go home. He suggested a dedicated court for human trafficking as a potential solution.

Group Discussions

After the discussion, Ms. Reining suggested that it would be effective to break into small groups to identify the priority issues to work on and related activities. Ms. Verghis then suggested that we break into three groups according to areas of interest, namely those

working on legal, labor or health issues. The participants then divided themselves into three small groups based on Labor, Health and Legal issues.

The Way Forward

After the group discussions, Ms. Moses (MTUC) asked the chairs of each of the groups to provide feedback on their respective discussions and share their action plans for the next year (Sept. 2011 – Sept. 2012). See table below.

<p style="text-align: center;">LABOR Chair – Pari Moses</p>	<p style="text-align: center;">HEALTH Chair – Ng Tze Yeng</p>	<p style="text-align: center;">LEGAL Chair – David Victor</p>
<p>The labor group identified the following priority issues:</p> <ol style="list-style-type: none"> 1. Outsourcing (the contracting out of business to an external provider), as it creates a great deal of vulnerability for workers 2. Migrant domestic workers (MDWs), in particular the need for MoUs to be more transparent, for labor contracts to be in line with international standards, and ILO Conventions to be adhered to <p>Activities:</p> <ol style="list-style-type: none"> 1. Dialogue with the a) Ministry of Human Resources, b) the Ministry of Home Affairs, and the c) Immigration Department, on key priority issues 2. A public awareness programme to empower migrant workers and MDWs 	<p>The health group identified the following priority issues:</p> <ol style="list-style-type: none"> 1. Access to the health care system, particularly for undocumented workers who have experienced forced labor and human trafficking 2. Identification of trafficking and forced labor survivors and their access to comprehensive health services. <p>Activities:</p> <ol style="list-style-type: none"> 1. Dialogue with the Ministry of Health on the key issues identified. Work with the Malaysian Medical Association (MMA) to facilitate Ministry engagement. 2. Share HEI’s research report with relevant UN Special Rapporteurs 3. Community awareness raising and social media campaign on psychosocial issues of forced labor and human trafficking. (CARAM Asia to assist with awareness raising on the issues with 	<p>The legal group identified the following activities:</p> <ol style="list-style-type: none"> 1. Research on regulations to accompany the Anti-Trafficking in Persons Act (ATIP) to show how the Act can be implemented. Can draw on good practices from the US, Cambodia, Nepal and the Philippines 2. Propose a separate legal framework for human trafficking in order to manage the sensitivity of the cases (similar to child and family courts) 3. Propose guidelines that outline skills for rescue officers and for those who identify and interview survivors

<p>3. ILO Submissions, Challenging cases (particularly human trafficking and forced labor) will be submitted to the ILO as complaints.</p> <p>4. Memorandum, Develop a memorandum to the Prime Minister focusing on forced labor and human trafficking. It will address the right to work for refugees. It will also include the need for transparency on MoUs for MDWs.</p>	<p>respect to the migrant population)</p>	
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Concluding Remarks

After the action plans were shared, Ms. Reining let the participants know that the minutes of the meeting would be circulated to the participants. She also suggested that the participants meet in their respective groups every three months to plan and discuss progress.

Ms. Verghis mentioned that some of the activities would be taken on by individual organizations, while others would be done collectively. She also said it would be good to develop a timeline for certain activities.

Ms. Moses mentioned that the Memorandum should have input from all participants, so it would be strong and reflect the concerns of everyone. Ms. Verghis suggested that Ms. Moses take the lead to coordinate the Memorandum and call for a meeting to discuss it. Ms. Moses agreed to this, and it was felt the Memorandum should be drafted before the end of the year.

The meeting closed at 12:15 pm.

Participants List

No	NAME	ORGANIZATION
1	Thomas Aung Ling	Alliance of Chin Refugees
2	David Victor	Bar Council , Sub-Com on Migrant
3	Sumitha Shaanthinni	Bar Council Malaysia
4	Moe Moe Khine	Burmese Refugee Organization
5	Zai Rema	Chin Refugee Committee
6	Renato Villa	Embassy of the Philippines
7	Asha Singh Lim	Health Equity Initiatives
8	Michelle Reining	Health Equity Initiatives
9	Tze Yeng Ng	Health Equity Initiatives
10	Sharuna Elizabeth Verghis	Health Equity Initiatives
11	Vizla Kumaresan	Health Equity Initiatives
12	Michelle Gunaselan	International Committee of the Red Cross (ICRC)
13	Assumpta Kai Htang	Kachin Refugee Committee (KRC)
14	Elizabeth Anne	Legal Aid Centre, Kuala Lumpur (LAC)
15	Parimala Devi Moses	Malaysian Trade Union Congress (MTUC)
16	Lin Lett	Multi-National Women Organization of Burma (MNWOB)
17	Mohamed Safie BP Mammal	UNI Global Union-Malaysian Liaison Council (UNIMLC)
18	Watie	UNI Global Union-Malaysian Liaison Council (UNIMLC)
19	Selena Nelson-Scakedo	United States Embassy, Kuala Lumpur