



6 August 2021

**Re: Submission to the Malaysia National Action Plan on Forced Labour (2021-2025)**

North South Initiative (NSI) is an organization to help build synergy between the North and South in addressing human rights, social justice and development issues. Our main mission is the empowerment of marginalized groups including migrant workers

CIVICUS: World Alliance for Citizen Participation is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has more than 10,000 members in more than 175 countries throughout the world.

We welcome this opportunity to make this submission on the draft Malaysian National Action Plan on Forced Labour (NAPFL) 2021-2025 to overcome the issue of forced labour in the country. Our submission will focus on the need to ensure that civic freedoms including - freedom of expression, assembly and association - is integrated to the national action plan.

These rights are guaranteed in international human rights law and standards including the New York Declaration for Refugees and Migrants and ILO conventions. We believe the restrictions to their civic freedoms creates barriers for migrant workers from speaking up and mobilizing to improve their conditions related to employment, housing and so forth. We also believe that restrictions to civic freedoms is a major stumbling block to address forced labor. The analysis and recommendations below are based on our monitoring as well as the findings of a research project on migrants and refugees in Malaysia.<sup>1</sup>

**Freedom of Expression**

Article 10(a) of the Malaysian Constitution guarantees the right to freedom of speech and expression. However, many laws severely restricted this right and are inconsistent with international human rights law and standards.

Our research findings show that many migrant workers and refugees often fear speaking up to criticize or call on the authorities to meet their needs. When they do speak up, they often feel that they are ignored, and that the government rarely listens to them. Migrant workers told us that among the challenges they face in speaking out include language barriers for them to express

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<sup>1</sup> Freedoms on the Move: The Civic Space of Migrant Workers and Refugees, 18 October 2019, Solidarity Center and CIVICUS, <https://www.civicus.org/index.php/freedoms-on-the-move>

themselves, a lack of access to information, fear of being fired, detained or deported and harassment or intimidation.

In some cases, due to the fact their employer holds their passports, the migrant workers told us that speaking up is often not an option. The main perpetrators of violations of the right to freedom of expression for migrant workers include employers and business owners, the police and other state agents. Refugees told us the most common free speech challenges they experience are language barriers for them to express themselves and harassment and intimidation. The main perpetrators of violations of the right to freedom of expression for refugees are the police and other state agents.

### **Freedom of Peaceful Assembly**

Article 10(b) of the Malaysian Constitution guarantees the right to peaceful assembly. However, the 2012 Peaceful Assembly Act (PAA) imposes notice requirements that are onerous and inconsistent with international standards. Furthermore, the right to assemble under the PAA does not extend to foreigners including migrant workers and refugees.

Many migrant workers and refugees told us they do not feel safe to protest in the streets and often they believe their rights are not as protected the same as they are for other people. They believe if they take part in protests they could be fired from their job, removed from their workplace, perhaps without payment for work already done, detained or deported.

### **Freedom of Association**

Although Article 10(c) of the Malaysian Constitution guarantees the right to form associations, this right has been restricted by various laws and the actions of the prior government.<sup>2</sup>

Our research found that while some migrant workers have formed informal organisations to support themselves many do not feel safe or confident to do this as the law (Societies Act 1966) prohibits the operation of unregistered groups. The previous government used legislation to restrict the formation and operation of associations, including by threatening to suspend or close civil society organisations (CSOs) and limit the activities of informal movements.

When asked what the main challenges faced by migrant workers in the exercise of their labour rights, they say intimidation and pressure from their employers that the government and employers do not listen to them and that there are barriers in the right to strike.

With regards to the ability for migrant workers to join unions, this is another massive challenge. Many are unsure if they can join a union. According to our research, migrant workers, are often coerced by agents or their employers not to join unions. In some cases, migrant workers told us that their working contracts or the constitution of certain trade unions deny their participation.

For refugees who work they say the main challenges they face in exercising their labour rights include intimidation and pressure from their employers that the government and employers do not listen to them, and that lack resources to organise.

To this end, and in light of the concerns described in this submission, we urge you to make the include the recommendations in the national action plan on forced labour:

- The Malaysian government must create and maintain, in law and in practice, an enabling environment for the rights of migrant workers and refugees, in accordance with the provisions enshrined in the ICCPR, the UN Migration Convention, International Labour Organization (ILO) standards and other international laws and standards including the Global Compact for Migration, Global Compact for Refugees, Sustainable Development Goals and Guiding Principles for Business and Human Rights.
- The Malaysian government must guarantee the fundamental civic freedoms of all people on the move, regardless of their legal status, as provided for in the New York Declaration for Refugees and Migrants and ratify and uphold the 1951 UN Convention on Refugees and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- The Malaysia government must ratify and respect ILO conventions No. 87 and 98 on freedom of association, right to organise and collective bargaining, and No. 189 on domestic workers. Ratifying ILO convention No. 190 on violence and harassment at the work place would also create an enabling environment for civic freedoms especially for women migrant workers.
- The Malaysia government must send a strong message that hate speech, racism and xenophobia against migrant workers and refugees will not be tolerated. It must also ensure that all bilateral and multilateral agreements related to migrant workers and refugees guarantee their civic freedoms and do not include provisions that allow for these freedoms to be restricted in law and practice. It must also ensure that law enforcement authorities and non-state actors who violate the assembly rights of migrant workers and refugees are held accountable for their violations;
- Migrant workers and refugees also need to be informed about their civic freedoms and the importance of collective action and encouraged by the diplomatic missions of their countries of origin to join or form unions or associations and advocate for themselves.
- Trade unions must support the participation and engagement of migrant workers and refugees who work and help them make demands to the state and employers. Trade unions should also permit migrants and refugees to join as members and to take up leadership positions without discrimination.
- Malaysia must abolish the “Kafala” like labour recruitment system which chains a migrant worker to one employer via the temporary work visit pass. As per international standards, workers must have the right to leave their employer with notice, and not permission. This scenario is amongst the main causes of migrant workers ending up in forced labour conditions in Malaysia.

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