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# REPORT

**Systematic human rights violations**

**against migrants**

**in the immigration detention centers**

**in Sabah, Malaysia**

October 2020



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## EXECUTIVE SUMMARY

This report is the result of an investigation by the fact-finding team from the *Koalisi Buruh Migran Berdaulat* (KBMB) on the deportation process of more than 1,700 Indonesian migrant workers during the Covid-19 pandemic from Sabah, Malaysia to Indonesia. The report's findings refer to the period of June to September 2020, but they are not limited to this time period. The repatriation wave of Indonesian migrant workers and their families, the majority of whom are oil palm plantation workers, is still ongoing at the time of this writing. Furthermore, the situation is not new, as this deportation process has been ongoing for years and is part of Sabah's migration regime, which relies on a huge amount of undocumented and therefore vulnerable migrant workers.

This investigation's findings of human rights violations have occurred systematically and massively against thousands of migrant workers over the years. The willful misconduct by official perpetrators has been ongoing for years. The Temporary Detention Centers (PTS), where migrants are held before being repatriated, are institutions of torture, mistreatment, and abuse. Severe human rights violations were and are carried out every day.

This institutional violence is a problem not only inherent of the migration regime but a product of it. The current migration regime in Sabah creates and continues to maintain irregular migration by only allowing legal working quotas which are far from the number of low skill labourers needed, for example on palm oil plantations. Accordingly, the number of undocumented workers stays high due to demand (in fact, they make up the majority of palm oil workers in Sabah) but they are nonetheless punished as criminals. The abuse experienced in this process unfolds in stories of violence and terror among migrant workers. The fear of being detained hence leaves workers vulnerable to being exploited by their

employers. As a consequence, the migrant regime can be used to carry out effective control over undocumented workers, not only by the state but also by the companies which use it as threat and disciplinary action. This is reflected in the fact that only migrants working illegally in the country are punished systematically but not their employers, the plantation owners. Even though employers could theoretically be punished for employing more than five irregular migrants at the same time, in reality the research team has never heard of any case where a big plantation company has been fined. In very few cases, this has happened to small plantations.

### The findings of the investigation show:

- Since the arrest, investigation, and trial, almost none of fair trial principles have been fulfilled by the authorities in Sabah, Malaysia. No deported migrant had ever been accompanied by a lawyer or legal advisor. Before court, all the defendant has is only a choice to admit the wrongdoing, and none of the deported migrants have ever received their court files or documents.
- Deported migrants detained at the PTS experience various kinds of inhuman and degrading treatment and punishment.
- Deported migrants detained at the PTS experience extortion, seizure of property, and exploitation of child deported migrants.
- The cramped situation in detention facilities makes migrants vulnerable to Covid-19. It causes them to suffer from various kinds of physical illness and mental health issues. Among the detainees were women, children and the elderly; the detention facilities do not provide facilities and special assistance for pregnant women.

- The delay in deportation confines migrants – who have already served their sentences for immigration violations, and therefore should be free people – for a prolonged time in the PTS in Sabah.
  - The information collected indicates that various kinds of inhuman and degrading treatment and punishment in PTS in Sabah are not isolated individual cases, but have been going on routinely for years, making thousands of migrant workers its victims.
- Based on these findings, KBMB urges the Malaysian government to take the necessary steps including policy, legal, and administrative reforms, and allocate resources needed for service improvement, in order to:
- Immediately stop all forms of violence, torture, and other cruel, inhuman, and degrading treatment or punishment.
  - Prevent prolonged detention and ensure a swift deportation process and respect all the inherent rights of all deported migrants.
  - Ensure all deportation processes consider the deported migrants' health condition by taking the principles of human safety into account.

## List of abbreviations and their meanings

BP2MI	Agency for the Protection of Indonesian Migrant Workers
FELDA	Federal Land Development Agency
KJRI	The Consulate General of the Republic of Indonesia (in Kota Kinabalu)
KRI	The Consulate of the Republic of Indonesia (in Tawau)
NTB	West Nusa Tenggara
NTT	East Nusa Tenggara
PKP	Movement Control Order or Lockdown
PTS	Temporary Detention Centre

## TIMELINE OF IMPORTANT EVENTS

### 18 March 2020:

Malaysia enforced the Movement Control Order (PKP) throughout its territory. All public activities were suspended, including activities on palm oil plantations.

### 19 March 2020:

The North Kalimantan Provincial Government asked the Sabah government to postpone the deportation process to its territory, on the grounds of preventing the spread of Covid-19.

### 6 April 2020:

The workers in the palm oil plantations returned to work after 17 days of inactivity. Several protests occurred because most workers had to accept a 17-day wage cut.

### 26 April 2020:

The Indonesian Consulate in Tawau, Sabah, Malaysia prepared to repatriate stranded Indonesians who were visiting Sabah.

### 15 May 2020:

A total of 111 Indonesian citizens stranded in Sabah, Malaysia were sent home.

### 3 June 2020:

The deportation process resumed after two months of halt in April and May 2020 as the impact of the Covid-19 outbreak. The first batch started to be repatriated on 3 June 2020.

### 5 June 2020:

240 deported migrants from the first batch arrived in Parepare, South Sulawesi. 185 of them are from South Sulawesi.

### 5 June 2020:

As a prevention of Covid-19 transmission, the city government of Parepare ordered the deported migrants (26 from NTT province) who just arrived at the Parepare port and were resting at the BP2MI shelter, to be relocated to other

places out of the city. BP2MI officials then relocated them to Makassar, over 150 km away. Around 11 deported migrants from Sinjai regency (230 km away) – who were supposed to be picked up by Sinjai local authority – were also sent home that night by renting a car at 11pm.

### 8 June 2020:

One of the 26 people NTT evacuated to the city of Makassar was reported to be missing. According to the colleagues, the person had suffered from depression and mental stress since being placed in detention.

### 24 June 2020:

227 deported migrants arrived in Parepare, South Sulawesi.

### 25 June 2020:

25 deported migrants from NTT (the first batch of deportation on 3 June) were sent to NTT via Bira port in South Sulawesi, after waiting for 20 days in Makassar. One deported migrant was still missing.

### 30 June 2020:

413 deported migrants arrived in Nunukan and accommodated in BP2MI Nunukan shelter.

### 3 July 2020:

225 deported migrants arrived in Parepare port, South Sulawesi, 65 of whom are from NTT and other provinces. They were accommodated in BP2MI shelter in Makassar. Six of the deported migrants escaped from the shelter, allegedly to return to Nunukan and then to Sabah.

### 13 July 2020:

Five deported migrants run away from BP2MI shelter in Makassar, one picked up by family.

### 15 July 2020:

95 deported migrants were sent to Nunukan from Tawau port, Sabah. On the same day,

59 deported migrants from NTT and NTB that sheltered in BP2MI in Makassar were sent to their next destination. Those from NTT were repatriated via Bira port, South Sulawesi, while two deported migrants from NTB were flown out from Makassar airport.

### **22 July 2020:**

The fifth repatriation group was 54 people, 26 of whom were from Sulawesi.

### **3 September 2020:**

The seventh batch of deportation (131 deported migrants) arrived in Nunukan and accommodated in BP2MI Nunukan shelter.

### **10 September 2020:**

266 deported migrants arrived in Nunukan from Tawau, Sabah. They were accommodated in BP2MI Nunukan shelter.

### **16 September 2020:**

87 deported migrants were repatriated from Nunukan to Parepare, arrived on 18 September 2020. Out of 87, 15 deported migrants are to

be sent to NTT. They stayed at PB2MI shelter in Parepare, South Sulawesi.

### **22 September 2020:**

14 deported migrants to be repatriated to NTT were sent to Larantuka port in NTT via Makassar, South Sulawesi. One deported migrant was picked up by the family in Makassar.

From June to September 2020, after having been suspended in April and May, the repatriation process was resumed. Official statistics show that between June and September 2020, a total of 1,082 migrants were deported from PTS in Tawau alone,<sup>1</sup> deported to the border island Nunukan, to Sulawesi and further on. As the statistic on the table 1 shows, this deportation process is a long ongoing issue. We could not obtain official statistics from three other PTS, but as shown in the timeline above, more than 1,700 deported migrants were sent from Sabah to Indonesia through Nunukan. However, even this number does not reflect the actual number of migrants deported, as the collection of this data was not the aim of our team.

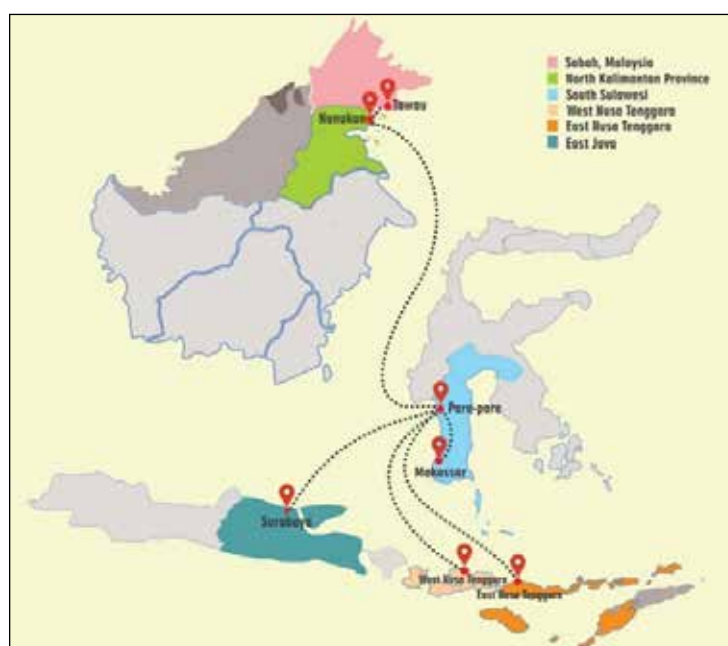


## Indonesian migrants deported from Sabah, Malaysia to Nunukan, Indonesia, 2010-2020

Year	Number of deported migrants	Origin of Immigration Detention Centre (PTS)	Average per month
2010	3899	Kota Kinabalu, Sandakan, Papar Kimanis, Tawau	325
2011	3663	Kota Kinabalu, Sandakan, Papar Kimanis, Tawau	305
2012	2994	Kota Kinabalu, Sandakan, Papar Kimanis, Tawau	249
2013	2750	Kota Kinabalu, Sandakan, Papar Kimanis, Tawau	229
2014	3641	Kota Kinabalu, Sandakan, Papar Kimanis, Tawau	303
2015	6014	Kota Kinabalu, Sandakan, Papar Kimanis, Tawau	501
2016	1827	Tawau	152
2017	1929	Tawau	160
2018	1511	Tawau	126
2019	1833	Tawau	152
2020	1403	Tawau (as of September)	155

Notes: Throughout January-September 2020, the deportation was cancelled in April and May due to Covid-19 pandemic and the request from the Governor of North Kalimantan, Indonesia.

Source: A Task Force of Indonesian Consulate in Tawau, Sabah, Malaysia, 2020.



Map: Deportation Flow of Indonesian Migrants from Sabah, Malaysia to Indonesia



## THE IMPLICATION OF COVID-19 ON PALM OIL WORKERS

The spread of the coronavirus causing the Covid-19 pandemic and its global countermeasures have a direct impact on Indonesian migrant workers working in the palm oil industry in Malaysia. This includes the region Sabah which includes the largest producers of palm oil within Malaysia. Since 18 March 2020, the Malaysian government has imposed mobility restrictions or Movement Control Orders (PKP) throughout its territory. This policy was followed by an order to halt many citizen activities. The termination of activities in palm oil plantations first took effect on 25-31 March then continued on to 1-14 April 2020. This situation was followed by the tightening (then closing) of the Indonesia-Malaysia border by the governments of the two countries.

In addition, the Governor of North Kalimantan sent a letter to Sabah Government requesting a temporary suspension of deportation policies.<sup>2</sup> The same request was made by the Consulate General of the Republic of Indonesia (KJRI) in Kota Kinabalu.<sup>3</sup> The suspension of deportation was said to be a step to prevent the spread of Covid-19, on the assumption that the spread originating from migrant workers was very high. This presumption showed up in various media in Indonesia and spread in society, giving rise to a negative stigma for migrant workers, even though they had followed all the protocols for handling Covid-19 during the deportation process and even tested negative.

The negative impact of the request for a suspension of the deportation policy increased the length of the detention period for migrant workers in the Temporary Detention Centre (PTS) and the more overcrowded the detention centres became.

In May, the representative office of the United Nations in Malaysia urged the Malaysian government to change the protocol for handling detention. Specifically, they asked them to differen-

tiate detention centre facilities from prisons and seek out community-based alternatives to keep distance between people and not overcrowd facilities. The UN also called on the Malaysian government to prioritize the immediate release of children from all detention centres.<sup>4</sup> However, there was no positive response from the Malaysian government to the Circular from the United Nations. Thus, a result of inaction increased cases of human rights violations against detainees and, in the end, detention and prison facilities became a place for the spread of new cases of Covid-19.<sup>5</sup>

Against this background, this report is an investigative effort to explain the condition of Indonesian migrant workers detained in Sabah's PTS during the Covid-19 period, and the process of their deportation to Indonesia. It is worth noting here that also without the requests for suspension of deportation by the Indonesian government and even without Covid-19, the prolonged migrant detention in PTS is a longstanding problem in Malaysia.<sup>6</sup>

Alerted by the worsening of the situation because of the Covid-19 pandemic, our investigation on the conditions of the migrant workers provides an opportunity to dig deeper and examine the complete stories – long known and widely circulated among palm oil plantation workers - about torture, mistreatment and cruelty in Sabah's PTS.

## LONGSTANDING EXPLOITATION BY SABAH'S MIGRATION REGIME

Sabah is a federal state of Malaysia, located in the northern part of the island of Borneo. It is the largest palm oil producing region in the country. Its plantation area expands 1.5 million hectares and covers around 26.5 percent of the total active plantation area in Malaysia. In 2018 alone, Sabah produced 5.14 million tons of crude palm oil.<sup>7</sup> With this area of land, it is estimated that there are at least one million workers working on palm oil plantations in Sabah, most of whom (around 90 percent) are Indonesian migrant workers, originating mainly from Sulawesi and East Nusa Tenggara.<sup>8</sup>

In the early 1980s, the Sabah government issued a development scheme policy that recruited foreign workers and residents to occupy new vacant lands. At that time, Sabah needed at least 11,000 people. But with a population of only 1.28 million people in 1985 and a shift to urbanisation and higher paid jobs, the need for tens of thousands of people to cultivate new lands could not be fulfilled. This situation led to an increase in labour recruitment from Indonesia specifically.<sup>9</sup>

Over the years, the number of Indonesian workers in Sabah continued to increase. Accordingly, the number of people without proper documents also increased, specifically due to massive recruitment of workers by large palm oil companies starting in the 1990s, such as FELDA, which is owned by the Malaysian state. The official quota system is the main cause of the huge number of undocumented workers, which make up the majority of palm oil plantation workers. Companies were only allowed to officially recruit one worker for every eight hectares of plantation land.<sup>10</sup> This number was never feasible. Looking at an Indonesian palm oil plantation's average hiring practice, employing one worker in every four hectares would be a more realistic ratio for the harvesting work. Moreover, to run a palm oil plantation with all its different

jobs (including not only harvesting, but also spraying, fertilizing, fruit picking, tree maintenance, truck driver, etc.), the ratio would be closer to one worker for every one hectare.<sup>11</sup> Therefore, in reality, almost all palm oil companies in Sabah recruit seven times more migrant workers than the quota allowed by the Sabah government; in this reality, seven out of eight workers employed don't have official documents. It is this migration regime that has continued to bring waves of undocumented migrant workers to Sabah to this day. It is important to note that even migrant workers who come to Sabah legally are, for various reasons, vulnerable to becoming undocumented migrants.<sup>12</sup>

Migrants without official documentation (e.g. working permits) live in constant fear of getting arrested. When migrants in Sabah are arrested, first they are detained in the police office for a maximum of two weeks. If they have documents, the employer can come and present the documents to release them. If not, they go to court, where they get charged with a prison sentence. After the prison sentence they are sent to a Temporary Detention Center (PTS) in Sabah. There are four PTS in Sabah: Kota Kinabalu, Sandakan, Papar Kimanis and Tawau. There is no clear regulation on the duration of this process and the stay in the PTS. Some migrants are detained for more than 6 months, others are there for less than three months.

## METHODOLOGY

Once This investigation was triggered after news broke in March 2020 about the suspension of the deportation of detainees at the PTS commonly known as Rumah Merah (Red House), which is infamous as a torture house among migrant workers.

With limited freedom of movement during the Covid-19 pandemic and no access to detainees at PTS, the investigation team started to gather information through official channels and communicated with several parties, including the Consulate of Indonesia (KRI) in Tawau, Sabah and several local governments in Indonesia. A first field investigation was carried out in June 2020 upon the arrival of deported migrants at the Port of Parepare in South Sulawesi, where the team was able to interview the former detainees. In a second field research the team visited the border area Nunukan, North Kalimantan, in September 2020 to directly observe the deportation process and conduct several interviews with key sources for information, including medical experts. In addition, the team followed some of the repatriation processes by taking the ship together with the deported migrants that repatriated from Nunukan in North Kalimantan to Parepare port in South Sulawesi.

During June-September 2020, we collected testimonies from deported migrants detained at PTS; first we determined their overall physical and psychological condition before collecting information about their experiences while being detained in the PTS and during the deportation process to Indonesia. The investigation was conducted to find out if there are patterns of human rights violations during the deportation process,<sup>13</sup> not only individual cases.

In gathering these testimonies, we conducted in-depth interviews with 43 deported migrants, consisting of 21 men, 20 women, and two children, who originated from Sulawesi, East Nusa

Tenggara, and West Nusa Tenggara. We also met with five child deportees between the ages of 9 months and 4 years, whom we only interviewed briefly. All of these deported migrants experienced first the arrest and detention in police offices, the conviction for illegal immigration and working without proper documentation, a prison sentence, and then detention at PTS, before being deported to Indonesia.

We also conducted interviews and meetings with government institutions, including the Office of Manpower and Transmigration of South Sulawesi Province, and the office of Indonesian Migrant Protection Body (BP2MI) in Makassar and Nunukan who are involved in the process of returning the migrant workers. In addition, we conducted a document review to identify the suitability of procedures and practices during detention and deportation process.

To examine the relevant findings, we conducted several virtual meetings with institutions related to this issue, particularly with KRI in Tawau, Sabah, the Ministry of Foreign Affairs in Jakarta, Indonesia, and the BP2MI in Jakarta, Indonesia.



## KEY FINDINGS

### Malaysia and international human rights treaties

Malaysia as a member of the UN has affirmed acceptance of the Universal Declaration of Human Rights. It, however, is one of the few states that is not a party to many of the core international human rights conventions that countries around the world have widely ratified, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>14</sup>

However, some core human rights provisions such as the prohibition of torture, are jus cogens or peremptory norms of international law, which means that States have an obligation to enforce them even if that State has not ratified a relevant treaty.<sup>15</sup>



### Problem in Sabah, Malaysia

***Violations against principles of fair trial, access to justice and protection against arbitrary arrest and detention and non-discrimination.***

#### **Fair trial**

Under article 10 of the Universal Declaration of Human Rights (UDHR), everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The right to a fair trial is also provided by all of the core human rights treaties, especially by the International Covenant on Civil and Political Rights (ICCPR), in its article 14. Malaysia is not a member State of the ICCPR. Therefore, its provisions are not opposable to this State. However, the right to a fair trial recognized in the UDHR has since become legally binding on all States as part of customary international law.<sup>16</sup>

The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. Article 14 of the Covenant aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights.<sup>17</sup> The right to a fair trial includes the right to equality before the courts, which implies that the parties to the proceedings are treated without any discrimination; it must be guaranteed to everyone, even migrant workers.<sup>18</sup> The right to a fair trial also includes the right to legal assistance in criminal proceedings, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, the right to be presumed innocent until proven guilty according to law, the right of all persons charged with a criminal offence to be informed promptly and in detail in a lan-

guage which they understand of the nature and cause of criminal charges brought against them, the right to access documents, other evidence and all materials that the prosecution plans to offer in court against the accused or that are exculpatory, the right to have free legal assistance if the accused does not have the means to pay for it, the right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court, the right not to be compelled to testify against oneself or to confess guilt.<sup>19</sup>

### Access to justice

The cross-cutting principle of non-discrimination, firmly established in international human rights law, requires States to grant access to justice to all individuals, including migrants, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>20</sup> The Human Rights Committee (CCPR) set out clearly that States have the obligation to guarantee the rights found under the ICCPR without discrimination between citizens and migrants.<sup>21</sup> The Durban Declaration and Programme of Action (DDPA) on non-discrimination calls for the elimination of discrimination in many areas, including access to justice, and adds, regarding migrants, that States should promote and fully protect migrants' human rights and fundamental freedoms without regard to legal status.<sup>22</sup> Any migrant detained should be informed of their rights, including the right to be represented by a lawyer. Adequate legal counselling and representation should be promptly available and free of charge when required, including in border or transit zones and in detention or reception centres.<sup>23</sup> It bears noting that the rights set out in this section apply to all migrants, including irregular migrants, who are deprived of their liberty, regardless of the type of holding facility or label given to the detention.<sup>24</sup>

In essence, the core elements of the right to access justice are generally considered to be: 1) the recognition as a person before the law; 2) the equality before the courts and tribunal;

3) the right to a fair trial and due process guarantees and 4) the right to an effective remedy.<sup>25</sup>

### Protection against arbitrary arrest and detention

Article 9 UDHR provides that no one shall be subjected to arbitrary arrest, detention or exile. Under Article 9 of the ICCPR, a State must not arbitrarily arrest and detain an individual, and the State must show that other less intrusive measures besides detention have been considered and found to be insufficient to prove detention is not arbitrary. Detention should only be a measure of last resort and should only be used if necessary and proportionate and should last for the shortest period of time. Detention for the reason of migrations should never be a prison sentence but separate facilities should be used with a minimum standard of human dignity. Children, however, should never be detained for immigration purposes.<sup>26</sup> The prolonged detention of a migrant is not justified simply by the need to wait for an entry permit or until the end of removal proceedings when reporting obligations or other requirements would be less intrusive measures to ensure that the migrant's situation complies with domestic law.<sup>27</sup> To ensure these rights migrants need to have access to independent legal counsel while arrested and facilities and institutions have to be effectively monitored by independent mechanisms which have an explicit human rights mandate to protect the rights of migrants deprived of liberty.<sup>28</sup> The prohibition of arbitrary detention is a peremptory norm of international customary law and is binding on all States.<sup>29</sup>

### Non-discrimination

Non-discrimination is a core human right and a provision is included in all core human rights treaties, for instance in article 7 UDHR, article 2 of the ICESCR, article 26 ICCPR. The provision affirms that every right set out in the convention concerned shall apply to every person without discrimination of any kind, with respect to race, colour, sex, language, religion, political opinion, national or social origin, birth and other status.<sup>30</sup> To be specified: "[...] the term 'discrimination'

as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".<sup>31</sup> The Inter-American Court of Human Rights held in its Advisory Opinion *On the Juridical Conditions and Rights of Undocumented Migrants* that the principle of equality and non-discrimination has reached the status of *jus cogens* or a peremptory norm of general international law. Therefore, all States are bound to these rules regardless of whether they have ratified specific international treaties.<sup>32</sup>

The international human rights legal framework contains international instruments to combat specific forms of discrimination, including for migrants.<sup>33</sup> Migrants are a vulnerable group because of their legal status and therefore often lack access to justice. Although the deprivation of liberty should be a last resort under international human rights law, migrants are often detained as a routine procedure and without proper judicial safeguards.<sup>34</sup>

All interviews we have conducted with the deported migrants indicate that handling of their cases by the authorities in Sabah does not fulfil the principles of fair trial.<sup>35</sup> Workers get arbitrarily arrested without information about the reason.

Almost all the arrests of migrant workers and their families occurred with a presumption of guilt that they are illegal or violate the laws. Deported migrants were taken to police offices without questions and would only be released when they could prove that they do not violate any regulation. Although among the migrants who were forcefully arrested possess documents, if they failed to show or present them in the police office within two days, they were considered illegal and violating the immigration law.

Presumption of guilt is a norm in all of the cases we collected.

A female deported migrant aged 19 shared her story that she and her father were arrested when working in the palm oil plantation. Other deported migrants shared that their arrest happened by plain-clothes police when walking in the town. Some others were arrested while napping with family at their rented room. All of them were taken immediately to the nearby police office without receiving an explanation of why they were being arrested, and without having been asked if they held documents.

In addition, all detained migrants either facing charges of lack of work permit or drug abuse had never been accompanied by a legal consular or lawyer. From the very beginning, these migrants never received any legal aid over the course of their arrest, detention, and trial. This shows that migrant rights of legal assistance have never been provided, neither by Malaysian authority nor the Indonesian Consulate in Sabah.

Our interviews suggest that arrests and investigations on the basis of drug abuse charges were done improperly and were discriminatory. The results of urinary tests would come out immediately without proper explanation. One interviewee told the team that even a negative result would be charged as positive. Another one explained that he was arrested without any evidence but was forced to touch a drug container placed by an officer to obtain his fingerprints as evidence. These allegations indicate severe abuse of state power.

In court each migrant has only about 5 to 10 minutes in front of the judge. The court's sentences are different for each detainee. A male detainee over 50 years old will get one to three months of prison. A mother with child gets one month. If the detainee is male and under 50 years old and it is his first offence, he gets three to six months. Migrants can ask for leniency from the judge to reduce the punishment. Therefore, they memorize the exact sentence to ask for leniency and the

judge can then reduce the sentence to under three months but with three lashes with a rattan-whip. If the migrant has been detained before, the sentences goes up to nine to 12 months.

Migrants are left with no other option than to plead guilty. They do not get the possibility to exercise their right to defend themselves, because they cannot access any legal advice. Migrants who admit their guilt receive a decrease in punishment and if they don't, they face higher ones. There is no obvious threat, but this whole system is treated as routine procedure by the police, as if there is no other choice. Hence, migrants are forced to acknowledge they have committed a crime and accept punishment, even without adequate evidence or witnesses. This shows how they have no right to defend themselves in front of the court.

A female detainee described how she underwent a trial in court:

**„When we arrived at the court (trial before the prison sentence process), we were told by the officers not to say much. The trial proceeded swiftly. We women were sentenced to one month, while men were sentenced to three months.”**

Another female deported migrant described that her auntie, who worked in a restaurant, was arrested at the same time with her, but is still being detained at the PTS. She said that her case has not been decided by the court. Upon inquiry she could only tell us that her auntie's case involved her employer who refused to admit that he employed her illegally, which could be punishable.<sup>36</sup> Not only are migrants pushed into admitting guilt, but then court decisions are pending, and decisions delayed without clear explanation. In this case migrants are detained in the PTS before the court decision.

None of detainees have received access to their court files or documents. There was no legal aid provided for these detained migrants whatsoever, not even from the Indonesian Consulate. Some migrants were even arrested despite the fact that they had official documents; however, the papers were confiscated by their employers. Migrants also often become victims of drug charges without sufficient evidence. In a nutshell, the court and trial process for migrants is often unfair.

All these findings demonstrate violations of the principles of fair trial, access to justice, prohibition of arbitrary arrest and detention and the right to non-discrimination.

### **Protection against torture and cruel, inhuman or degrading treatments.**

Article 5 of the Universal Declaration of Human Rights 1948 reads, *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*<sup>37</sup> This Article is widely regarded as expressing customary international law. Within the United Nations framework, torture and other cruel, inhuman or degrading treatment or punishment are explicitly prohibited under a number of international treaties, which are legally binding on those States which have ratified them. The International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and its respective committees (Human Rights Committee (HRC) and Committee against Torture (CAT)) which monitor compliance with the agreement are of particular importance. They do this by issuing General Comments or Recommendations, which provide detailed interpretation of specific aspects of the treaty.

The ICCPR has two particularly relevant articles to the prohibition of torture: Articles 7 and 10. Article 7 ICCPR reads: *“No one shall be subjected to torture or to cruel, inhuman or degra-*

*ding treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*" As in the UDHR it does not contain a definition of the prohibited acts nor does it specify the difference between them. In its general comment on this the HRC stated "distinctions depend on the nature, purpose and severity of the treatment applied."<sup>38</sup> Therefore, in its jurisprudence, the HRC often does not specify precisely which aspect of the prohibition has been breached, but simply states that there has been a violation of Article 7.

Article 10(1) ICCPR states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." This article complements, for those who have been deprived of their liberty, the prohibition of torture and ill-treatment. Not only may detainees not be subjected to treatment contrary to Article 7, but they also have a positive right to be treated with respect. This provision means that detainees may not be "subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons."<sup>39</sup> It therefore covers forms of treatment which would not be sufficiently se-

vere to qualify as cruel, inhuman or degrading under Article 7.<sup>40</sup> For Article 7 the HRC has indicated that the assessment of whether particular treatment constitutes a violation of Article 7 "depends on all circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim."<sup>41</sup> Elements such as the victim's age and mental health may therefore aggravate the effect of certain treatment so as to bring it within Article 7. However, it is not sufficient that treatment be capable of producing an adverse physical or mental effect; it must be proven that this has occurred in a specific case.

From the jurisprudence of the HRC, it seems that the Committee tends to apply Article 10(1) to general conditions of detention, reserving Article 7 for situations where an individual is subjected to specific attacks on his or her personal integrity (which must contain worse treatment than other individuals). While general trends may be detected from the jurisprudence, there remains considerable overlap in the Committee's application of Articles 7 and 10(1). In some cases, general conditions of detention have been so severe that they have reached the threshold of severity for a violation of Article 7, and in others, breaches of Article 10(1) have been found in cases of specific attacks.

The UNACT then included in Article 1 a definition of torture: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."





In Article 16 it goes further and requires States to prevent “*other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*” However, the UNCAT provides no definition of such acts. The Committee against Torture has itself recognised that “In practice, the definitional threshold between cruel, inhuman or degrading treatment or punishment and torture is often not clear.” However, the UN Special Rapporteur on Torture takes the position that “a thorough analysis of the travaux préparatoires of articles 1 and 16 of [UNCAT] as well as a systematic interpretation of both provisions in light of the practice of the Committee against Torture leads one to conclude that the decisive criteria for distinguishing torture from [cruel, inhuman or degrading treatment] may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted.”<sup>42</sup> The Special Rapporteur considers that, while torture is absolutely prohibited in all circumstances, the circumstances in which other forms of treatment are perpetrated will determine whether they qualify as cruel, inhuman or degrading within the meaning of the UNCAT. If force is used legally (under domestic law) and for a lawful purpose, and the force applied is not excessive and is necessary to meet the purpose (that is to say, it is proportionate), then this generally will not qualify as cruel, inhuman or degrading treatment.<sup>43</sup> **However, in a situation of detention or similar direct control, no such test of proportionality applies, and any form of physical or mental pressure or coercion constitutes at least cruel, inhuman or degrading treatment.** Cruel, inhuman or degrading treatment may “not amount to torture” either because it does not have the same purposes as torture, or because it is not intentional, or perhaps because the pain and suffering is not “severe” within the meaning of Article 1.

All testimonies referred to similar abusive treatments. Almost all of the deported migrants we

interviewed specifically mentioned that they were treated inhumanely. Both male and female deported migrants referred to the wording that they were treated like animals.

**„We were treated like animals. We were treated well only when there was a visit from the consulate. It only happened at the front office. The bad conditions we experienced inside were not seen by the consulate representatives. We don't know if the consulate knows our condition inside or not.”**

At six in the morning, in each PTS, the detainees were ordered to line up and do head count.

**„Every 6 am, we had to wake up. The block leader would shout at us to immediately line up and do head count. Each row consisted of 10 persons. We had to say good morning cikgu (teacher), then the guard would say: hands behind your back, head down. Anyone failed to do so would be punched and kicked. Every time we were hit, we had to say, Thank you cikgu. Otherwise we would continue to be beaten. So, we were treated really like animals. We had to call the officers as cikgu, otherwise, we were beaten up.”**

Routines like that were carried out every day. Hitting was just one way of punishment. Another example is seen while head counts were done in the morning. If they made a mistake in counting, the person was ordered to climb a ladder attached to one corner of the prison wall for up to five hours continuously. Detainees would be punished by squatting on the floor all day long if they were believed to have made a mistake, such as not being fully clothed, on one of the scarce toilets when the inspector arrives, or being noisy. This only happened in male blocks

where children above 14 years and elderly males were also treated to such punishment. To make matters worse, all detainees, including women, would get slapped in the face by the PTS staff or get ordered to take turns slapping the faces of other detainees.

Since March 2020, when the Covid-19 pandemic broke out, health protocols started to be enforced, especially spraying disinfectants on detainees. Instead of being a positive safety measure it was implemented in an inhuman and degrading way. One of the female deported migrants described how they were treated during the disinfectant spraying:

***„When we were in the shelter, when the corona outbreak was at its fullest, we were washed with alcoholic water (disinfectant) every day. We were high-pressure sprayed all over our bodies until we were completely wet. The wet clothes could not be changed, it had to dry on our body. They said that all germs would die. We were dizzy afterwards.“***

It therefore appears that detainees are exposed to torture, or cruel, inhuman or degrading treatments.

### ***Migrants experienced extortion and confiscation of personal property***

It is considered that it is not in the interest of migrant workers to have their personal belongings removed beyond the period of detention. It is therefore important that States establish clear criteria and an inventory of confiscated property. The confiscation must be supervised and it must be ensured that all properties are returned to its owner at the end of the detention.<sup>44</sup>

Most of detainees were often forced to contact their families to send them money and food.

Money paid to an officer could buy a phone call with family or hot water for a shower. They also use it to buy food from other detainees. However, between detainees, transactions are mostly bartering where instant cup noodles are the currency. The money sent was usually deducted by 30 percent, and food deliveries were usually partially confiscated before it reached the addressee. Those who wish to call their paid RM 10-20 (2.5 to 5 USD) to staff to call for no more than an hour. One deported migrant complained:

***„During the two months I was detained, my family lost about 6 million rupiah (400 USD). In PTS, the cost of living was many times higher. Anything that arrives, for example delicious food from the family, half of it would be confiscated. We only got half of it.“***

A mother and her 10-year-old child explained that they had to remove several valuables during the arrest and detention process. The mother complained:

***„We were arrested when we left the plantation area because we had planned our return home. The valuables we had with us all got lost in the procedure. Several other workers caught with us also lost their belongings. We lost bracelets, money, watches, and cell phones. What we were left with was the clothes on our body. We couldn't change our clothes for days, until finally at PTS, a fellow resident gave us a change of clothes. We were detained for 16 days (in lock-up), then imprisoned and PTS for ten weeks. In total, we were detained for 3 months.“***

When detainees get caught or sentenced any valuables they have on them, like mobile phones,

bracelets, money or watches, are taken by the officers in prison and the migrants have to sign a paper. When they get transferred to the PTS, they sign another paper that states they will get the phone or valuables back after being released from PTS. In reality, only a minority gets their valuables back. From our information, we understand that up to 90% of the time the valuables get „lost“ in the system. This can equate quite some amount of personal properties.

### **Rights of deportee children**

Under article 32 of the Convention of the rights of the child (CRC), States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The same article provides that State parties provide for a minimum age or minimum ages for admission to employment and for appropriate regulation of the hours and conditions of employment.

In addition, States parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare (article 36 CRC).

As a member state of the ILO, Malaysia has in particular ratified the minimum age convention (number 138). Under article 1 of this convention, each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. Article 2 of this convention states that each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this

Convention, no one under that age shall be admitted to employment or work in any occupation. Malaysia specified that the minimum age is 15.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) also contains some provisions related to children in context of migrations and their rights, but has not been ratified by Malaysia.

The Committee on children rights stated that regardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children's rights, is never in their best interests and is not justifiable and highlighted that international research supports this view.<sup>45</sup>

States must also take all necessary measures to prevent children in migration context from being subject of any kind of violence.<sup>46</sup>

A child deportee told us that at the time of our investigations there were 19 children in his block, mostly from the Philippines. Children in PTS were usually employed as garbage collectors and PTS block cleaners. He complained about the tough and tense situation while at the PTS. He admitted that he had once been slapped and his thigh was stepped on by the head of the PTS because of a riot among PTS detainees. Detainees that were employed as garbage collectors, cleaners, and gardeners worked morning to afternoon and would be compensated 30 cent RM (about 7 cent USD) per day. Those who work as a cook would earn 1 RM (about 25 cent USD) per day.

It therefore appears that several children rights are violated, especially the prohibition to detain children on the basis of their legal status, the prohibition of violence against children and child labour.

***Detainees suffer from various illnesses, mental health problems, and even death. Specific needs for vulnerable groups were not met.***

Under article 25 UDHR, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that the States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Malaysia is not part of this Covenant. However, since UDHR is in a large measure part of international customary law, everyone, included migrants, even undocumented, can request the respect of the rights provided by this Declaration, included right to health.<sup>47</sup>

Under article 24 CRC, States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.



States shall ensure that detained migrants are held in conditions that satisfy essential health standards and that they have access to essential healthcare services free of charge and without discrimination, including services that address sexual and reproductive health needs and mental health conditions.<sup>48</sup>

The European Court of Human Rights has considered that the need to provide health care in case of emergency is also part of the right to life and the prohibition of inhuman treatments.<sup>49</sup>

At the start of the Covid-19 pandemic, the number of detainees increased, and facilities got overcrowded. The residents complained that it got so cramped that they had to sleep on their side due to insufficient space. The deported migrants described the conditions at PTS:

***„In PTS, there were 10 blocks with the size of approximately 10 x 15 meters, with an elongated shape. One block contained more than 200 people, while each block only had three holes of toilets.”***

In addition, food is not sufficient and sometimes stale.

***„In PTS, the food provided was often still raw, the chicken meat still had blood, the rice was uncooked or stale, sometimes we got uncooked vegetables. Once, we were not given food until late afternoon.”***

Many among the detained migrants in PTS got diseases but did not receive adequate treatment. The most common illnesses were skin problems like itching and irritation up to acute body infections. The unavailability of clean water for personal hygiene and the cramped conditions<sup>50</sup> are the major cause of this. The available water was dirty and lacked decent quality and

this water was used for all daily needs: drinking, washing and cleaning.

The deported migrants recalled the conditions at PTS:

**„In PTS, almost all of them get itching and skin diseases. The water was dirty and smelly. Even the supply was problematic, so we often didn't shower for three days.”**

**„Rumah Merah (PTS) is hell. In prison, they gave us a little medicine for the sick, but at Rumah Merah the sick were left alone. They were just moved to another block. But most of us at PTS experienced all diseases.”**

A dermatologist at the General Hospital in Nunukan who usually handles the deported migrants' skin diseases explained that the PTS's dirty and unhealthy environment, where basic needs such as clean water are not provided, is the major factor of the spread of diseases such as scabies and dermatitis to all detainees at the PTS. To tackle such problems, the dermatologist explained, PTS should implement the minimum standards for the treatments of detainees, which include providing clean public bathing, washing, and toilet facilities.<sup>51</sup> One very common disease the migrants suffer has been Norwegian scabies, which is easily transmitted or contagious among the detainees, especially in the cramped blocks.

Another doctor who is also a HIV counsellor described that the condition of PTS is in high risk of transmitting contagious diseases including tuberculosis, diarrhoea, and cholera. The habit in PTS of making tattoos with very limited equipment and needles only insufficiently sterilized by burning the top, puts detainees at risk of transmitting hepatitis and HIV. Tuberculosis,

which is transmitted through aerosol droplets while coughing, sneezing, or speaking was also spread in PTS, and constitutes a major problem.

The densely crowded area badly affects the physical and mental health conditions of the detainees at PTS. Several detainees in PTS also fell ill without adequate access to medical treatment, some of whom have died. One interviewee testified that he observed at least three detainees who died inside the PTS in Tawau between December 2019 and August 2020. In addition, during the investigation we received two reports of the death of two deported migrants from their families, one inside the PTS in Papar Kimanis, and the other died in Queen Elizabeth Hospital, Kota Kinabalu, Sabah, due to inadequate treatment of his health condition inside the PTS. In one case, PTS authority did not even allow the family of the detainee who died in PTS to see the body, even though they were detained in another block in PTS.

Moreover, persons with specific needs like pregnant woman, children or the elderly don't get treated accordingly. On the contrary, women who were pregnant end up giving birth inside PTS without the help of the PTS officers, let alone doctors or nurses. One of the residents who gave birth in January 2020 is still being detained. Her child is now 7 months old in PTS (as of July 2020).

In some cases, officers would indeed take a woman giving birth to the hospital, but only if they could prove with a spot of amniotic fluid that she would soon give birth. One of the testimonies of the female deported migrants stated:

**„During my time in PTS between February-June 2020, in the block I was in, I saw three women giving birth. I've seen babies born alive in PTS. They were very small, it had to be due to malnutrition.”**

Children suffer specifically in detention. A child deportee described his situation:

***„I wanted to take a shower once but the water in the shower rarely came out. Often, there was no water for up to three days. We usually had to save water in mineral water bottles. If you want to take a shower, you often had to have a draw to get a turn. That was rationed only for two bottles of mineral water (only 2 liters of water).“***

A mother explained that her child sometimes stayed alone in a corner when he missed his friends at home. When he remembered his school, he sometimes hallucinated that he was in the flag ceremony and saluted the flag alone. He feels distressed because he cannot take the exam for class promotion at his school in Sabah.

The investigations therefore show that the basic and urgent health care needs of the migrants in detention are not met, in violation of their right to health and even sometimes their right to life and the prohibition of inhuman treatments.

***Prohibition of collective deportation and complex and inefficient administrative deportation procedures, result in prolonged detention***

Under article 22 ICRMW, migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

The prohibition of collective expulsion of aliens is part of customary international law, and, therefore, every State, regardless of the international treaties it has ratified, is still bound by the obligation to uphold the prohibition.<sup>52</sup>

States must establish in law a presumption against immigration detention and require administrative and judicial bodies to presume in favour of liberty and prohibit all mandatory or indefinite detention, ensuring that any use of detention is necessary, proportionate and limited in duration.<sup>53</sup> Additionally, the CMW stresses that the criminalization of irregular migration does not constitute a legitimate interest in regulating irregular migration.<sup>54</sup> Furthermore, the CMW emphasizes that lawful administrative detention may transform into an arbitrary detention if it exceeds the time period for which a State can properly justify the detention.<sup>55</sup>

A deported migrant from NTT explained that he waited for the deportation process in December 2019. Another deported migrant, a female migrant who lived in Sabah since she was three years old, said that she should have been deported from the PTS in January 2020.

***„I was detained and imprisoned in December 2019 for being undocumented and served one month in prison. This means that I should have been free and able to leave PTS in January or February 2020.“***

Other deported migrants stated:

***„Many of us should have left PTS in March 2020, but we were detained until June 2020, and we were the first group to be sent home after being detained for a long time in PTS. We could not stay longer in PTS.“***

The ineffective deportation administration procedure caused many deported migrants to stay in PTS until June 2020 or even longer. In fact, deportation arrangements could have been made before the PKP existed. This shows that the process of obtaining travel documents for deported migrant's repatriation is often lengthy

without clear reasons. This prolonged detention does not only affect detainees whose rights and freedoms are violated, but is also a burden on their families who have to send money and food and visit with the risk of being caught, etc. This failure of efficient administrative deportation procedures deprives non-citizens unnecessarily (including infants, children, and undocumented migrant workers) of their freedom without any access to court proceedings. This prolonged detention is therefore a violation of basic human rights. Whilst in prolonged detention in PTS by the Sabah authorities, violations of national and international law occur on a regular basis. Delays are mostly resulting from inefficient and complex administrative processes (coordination, budget, contracts, etc.) which lead to unreasonable deprivations of liberty.

## Conclusion

The report highlights the appalling treatment of migrants by the authorities in Sabah. The process of arresting and detaining migrants has deeply ingrained systematic human rights violations. This starts with the discriminatory arrest solely based on their Indonesian citizenship. This exceeds the legitimate interest of states to control and regulate immigration and instead leads to unnecessary detention. The arrest itself is arbitrary as migrants are not even given the possibility to validate and show their permits; often charges are based on false claims of evidence. Furthermore, migrants do not receive a clear reason for their arrest and are not informed of their rights, including their right to legal counsel. Everyone deprived of their liberty or facing a possible criminal charge has the right to the assistance of a lawyer, if necessary free of charge, and also the right to access relevant documents. Not only is this denied to them at every point of the process, but in addition migrants are put in a position where they seemingly have no other option but to plead guilty and accept the charge.

Once detained migrants face abusive conditions, degrading treatment and excessive disciplinary punishment which is considered to be within the definition of torture: hitting and slapping detainees and physical punishment lasting for hours for 'offences' like not being on time for the morning call or not replying in the expected format. Every person deprived of liberty has the right to be held in conditions that are consistent with human dignity and physical and mental integrity. No one may be subjected to torture or other inhuman or degrading treatment or punishment under any circumstances. The conditions in PTS in Sabah are far from achieving this requirement. Furthermore, everyone – including individuals in custody - has the right to the highest attainable standard of physical and mental health. The right to health extends not only to timely and appropriate healthcare, but also to underlying determinants of health, such as adequate food, water and sanitation. This is massively violated in the PTS, where not only food, water and sanitation are precarious, but healthcare is virtually non-existent. Even vulnerable persons experience the same condition. This includes children who get detained alongside their parents, even though detention of children must be a measure of last resort. Staying irregularly in a country does not fit this requirement. If detained on the grounds of serious criminal charges, their treatment must reflect the fact that children differ from adults in their physical and psychological development and must take into account the best interests of the child. This is clearly not the case in the PTS in Sabah.

The way in which migrant workers without documentations are treated within the process of detention cannot be accused too harshly and is unworthy of a state considering themselves a state under the rule of law.

## WHAT DEPORTED MIGRANT'S WISH FOR

Most of the deported migrants hope that they can return to Sabah to reunite with their families and earn a living. This hope is comprehensible because their homeplace is none other than Sabah. Most migrants were born in Sabah or have lived there for many years. Their repatriation to Indonesia based on the area of their birth and/or the area of origin of their family has – more often than not – nothing to do with the reality of life. Some deported migrants do not know or have never been to the “hometown” of their family or grandparents. For example, one of the deported migrants we interviewed was born and raised in Kota Kinabalu, Sabah, 20 years ago. Now he is forced to return to his family's origin in NTT, which he has never seen and does not know.

However, some other interviewees admitted that they did not want to return to Sabah and chose to gather with their families in Indonesia. The experience at PTS is quite scarring and traumatic. One example are two deported migrants who were disappointed with the company's policy FELDA, where they worked, who ended up firing their wives from their jobs when they were arres-

ted and detained because of missing immigration documents. The deported migrants who were separated from their families hoped that the government could help the process of repatriating their families who were still in Sabah. This shows that family (parents, spouse, children) and the reuniting of it is an important factor in driving the deported migrants back to Sabah.

A female deported migrant who had been abandoned by her husband since she was pregnant said:

***„I must go back to Sabah again, because my child is one year and seven months old. I entrusted my child to a friend there. I will return to Sabah because I also have to pay for childcare so far, because it costs money anyway. But I am also confused on how to get there, because with the current rate or illegal routes, I don't have the courage.“***





## RECOMMENDATION

### Recommendations for the Malaysian government:

1. Perform systematic efforts to implement fair trial principles and to end the on-going arbitrary court mechanism.
2. Improve the condition of PTS facilities to meet the minimum standards of World Health Organization.
3. Perform systematic efforts to eliminate and prevent mass torture and other cruel, inhuman or degrading treatment by the state in PTS
4. Ensure regular access to the supervisory mechanism for PTS.
5. Simplify deportation administration procedures to avoid prolonged detention.
6. Carry out a series of investigations into perpetrators of violence in PTS and punish them due to violation of the law, to stop the practice of impunity thus far.
7. Reform the legal system to stop criminalization against undocumented migrant workers and bring those who responsible of torture against migrants in PTS.
8. Provide alternatives to immigration detention, especially for deportee children.
9. Ratify the core human rights conventions, in particular ICCPR, ICESCR, UNCAT, IMCRW.

## WHAT HAPPENED SO FAR

The report was released Indonesia in a press conference on October 10, 2020. It was very well attended and was filled to the last seat and people had to be turned away. It provoked many reactions and already initiated some important changes. Before the release, the coalition made sure to contact important stakeholders and bring them on board, for example the Indonesian consulates in Kota Kinabalu and Tawau. The publication then took place alongside the national human rights commissions of Indonesia (NHRC) and Malaysia (SUHAKAM), thus giving the report the necessary importance and protecting the coalition from possible retaliations/negative impact. This report is the first to systematically document human rights violations in the deportation process in Sabah.

On the Indonesian side, the situation at arrival points in Nunukan and Sulawesi has been improved. The Indonesian Consulate General in

Sabah began at the end of October 2020 to recruit lawyers to assist Indonesian migrants in court cases. This is mainly focused on High Profile Case and Capital Punishment and is not intended for day-to-day court proceedings. Nonetheless this means relatives for the first time can request legal assistance. The Indonesian consulate also agreed, after the coalition insisted, to pay for the repatriation of deceased while detained in the PTS and provided financial support for the burial.

On the Malaysian side there has also been some reaction even though insufficient. SUHAKAM will conduct investigations to improve the situation in the camps. This is a very positive starting point. In addition, a discourse among authorities at the federal and local level has been triggered. There has not yet been any real political action, but the fact persists that the information on severe abuse can no longer be ignored.

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- 25 EU Charter of Fundamental Rights (n. 13), Article 47; ICCPR (n. 15), Articles 2(3), 14, 16; ECHR (n. 10), Articles 6, 13; ACHR (n. 11), Articles 3, 8, 25; OAU, ACHPR (n. 12), Articles 3, 7.
- 26 <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>
- 27 [https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality\\_and\\_Non-Discrimination](https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality_and_Non-Discrimination)
- 28 <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>
- 29 Report of the Working Group on Arbitrary Detention, Human rights council, A/HRC/27/47, 30 June 2014; Draft general comment n°5 on migrants' rights to liberty and freedom from arbitrary detention, Committee on Migrants Workers, 14 August 2020
- 30 <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>; [https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality\\_and\\_Non-Discrimination](https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality_and_Non-Discrimination)
- 31 See General Comment No. 18, in *United Nations Compilation of General Comments*, p. 134, para. 1
- 32 [https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality\\_and\\_Non-Discrimination](https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality_and_Non-Discrimination)
- 33 <https://www.un.org/ruleoflaw/thematic-areas/human-rights/equality-and-non-discrimination/>
- 34 <https://www.un.org/ruleoflaw/files/training9chapter13en.pdf>
- 35 <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf>
- 36 Under sections 55B and 56(1) (d) of the Immigration Act 1959/63 (Act 155): any person – including employers – can be subjected to a fine between RM10,000 and RM50,000, or imprisonment not exceeding 12 months, or both for each irregular migrant employed, and could also be subjected to a whipping of up to six strokes if they are found to be employing more than five irregular migrants at the same time. This act specifically targets violation in urban areas.
- 37 Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

- 38 HRC, General Comment No. 20, "Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment" (1992) §4, in UN Doc. HRI/GEN/1/Rev.7.
- 39 HRC, General Comment No. 21, "Humane treatment of persons deprived of their liberty" (1992), §3, in UN Doc. HRI/GEN/1/Rev.7
- 40 Notwithstanding this lower threshold level of severity, and the fact that Article 10 as a whole is not included in the list of non-derogable rights in Article 4 ICCPR, the HRC has concluded that Article 10(1) expresses a norm of general international law, and is therefore not subject to derogation. See HRC, General Comment No. 29, "Derogations during a state of emergency", §13(a), in UN Doc. HRI/GEN/1/Rev.7
- 41 Vuolanne v Finland, HRC Communication No. 265/1987, 7 April 1989, §9.2
- 42 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, UN Doc. E/CN.4/2006/6 (23 December 2005), §39.
- 43 Manfred Nowak and Elizabeth McArthur, "The distinction between torture and cruel, inhuman or degrading treatment", *Torture*, Vol. 16, No. 3, 2006, pp. 147–151. "Lawful purposes" include effecting a lawful arrest, preventing the escape of a person lawfully detained, self-defence or defence of others from unlawful violence, and action lawfully taken to quell a riot or insurrection.
- 44 Draft general comment n°5 on migrants' rights to liberty and freedom from arbitrary detention, Committee on Migrant Workers, 14 August 2020
- 45 Report of the 2012 day of general discussion on the rights of all children in the context of international migration, Committee of the children's rights
- 46 Joint general comment N°3 (2017) of the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families and N°22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration
- 47 Migrations internationales, santé et droits humains, Organisation mondiale de la santé
- 48 <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>;
- 49 European union agency for fundamental rights, L'accès aux soins de santé des migrants en situation irrégulière dans 10 Etats de l'Union Européenne, 2012
- 50 [https://www.who.int/water\\_sanitation\\_health/diseases-risks/diseases/scabies/en/](https://www.who.int/water_sanitation_health/diseases-risks/diseases/scabies/en/)
- 51 Interview with a dermatologist at the General Hospital in Nunukan, North Kalimantan, September 2020.
- 52 [https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality\\_and\\_Non-Discrimination](https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality_and_Non-Discrimination)
- 53 <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>
- 54 [https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality\\_and\\_Non-Discrimination](https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality_and_Non-Discrimination)
- 55 [https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality\\_and\\_Non-Discrimination](https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Equality_and_Non-Discrimination)



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