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Human Rights Situation in Malaysia

A joint submission of :

Franciscans International

VIVAT International-Indonesia

VIVAT International

PADMA Indonesia

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I. INTRODUCTION

1. This is a joint submission of Franciscans International¹, VIVAT International-Indonesia,² VIVAT International³ and Advocacy Service for Justice and Peace in Indonesia (PADMA Indonesia)⁴ concerning the human rights situation in Malaysia for consideration by the UPR Working Group at its 31st session, November 2018. The submission will address the situation of migrant workers who are facing multiple abuses and are often victims of trafficking for labour exploitation.

II. MIGRANT WORKERS AND TRAFFICKING IN PERSON

A. Second-Cycle UPR Recommendations

2. During the UPR session in 2012, the Government of Malaysia (GoM) accepted fourteen recommendations on the issue of trafficking in persons. These include recommendations to take efforts and put resources into combating trafficking in persons; fostering cooperation with its neighboring countries in regional frameworks, as well as providing support and assistance to victims of trafficking. On the issue of migrant workers, the GoM accepted at least three recommendations, which include ensuring that the recruitment agencies for foreign workers fully comply with the applicable laws and regulations; enhancing access to justice for foreign workers; investigating all cases of abuse of migrant domestic workers and bringing perpetrators to justice and allowing migrant workers full access to legal remedies.⁵

B. Legal and Institutional Framework

3. GoM has ratified several international instruments relevant to combatting trafficking in persons, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations (UN) Convention against Transnational Organized Crime; the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization (ILO).
4. GoM has not ratified several international legal instruments considered important in combating trafficking in migrant workers and guaranteeing the protection of their rights, such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) and the Protocol of 2014 to the Forced Labour Convention, 1930.
5. As a member the Association of South East Asian Nations (ASEAN), GoM is a State party to the ASEAN Human Rights Declaration and the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries, both of which are not

¹ Franciscans International (FI) is a faith-based International Non-Governmental Organization (INGO) with General Consultative Status with the Economic and Social Council of the United Nations. It was founded in 1982 to bring to the UN the concerns of the most vulnerable.

² VIVAT International-Indonesia is the coordination of VIVAT International in Indonesia.

³ VIVAT International is an organized network of the religious Congregations members coming from: SSpS and SVD, CSSP, ASC, CMS, MCCJ, MSHR, OMI, LSA, Cssp, SCJ, RA, MSCS, CSC. It has a presence at the United Nations, and focuses on social justice, development, peace and ecology issues.

⁴ PADMA Indonesia is Jakarta-based an Indonesian based organization working on human rights issues, especially trafficking in persons, rights of indigenous peoples and victims of state and security forces violence. by state and its security forces; rights of indigenous peoples and victims of trafficking.

⁵ See the report of the UPR Working Group on UPR for Malaysia, A/HRC/25/10 and its addendum A/HRC/25/10/Add.1

legally binding. It also participates in several ASEAN bodies, which include the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Malaysia is also a member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.

6. In 2007, GoM adopted the Anti-Trafficking in Persons Act 2007. This Act was amended in 2010 and renamed the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act. Malaysia also developed a Memorandum of Understanding (MoU) with several states, such as Sri Lanka, Vietnam, Thailand, China, Pakistan, Bangladesh, India, Indonesia and Cambodia with the aim of improving the regulation of foreign worker contracts and rights.⁶
7. GoM has adopted several laws concerning labor matters. They are Workmen's Compensation Act (1952),⁷ Trade Union Act (1959),⁸ Industrial Relations Act (1967),⁹ the Occupational Safety and Health Act (1994),¹⁰ and Employment Act (1995). Key human rights issues relevant to migrant workers in these laws include the equality of treatment for registered migrants with nationals in terms of wages, work hours, holidays, terminations, non-discrimination, freedom of association, access to complaint mechanisms and other protections.
8. The Employment Act (1955) stipulates a specific definition of Domestic Servant, under Part XI. It is defined as follows: "domestic servant means a person employed in connection with the work of a private dwelling house and not in connection with any trade, business, or profession carried on by the employer in such dwelling - house and includes a cook, house servant, butler, child's nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use."¹¹
9. GoM adopted its Eleventh Malaysia Plan 2016–2020: Anchoring Growth on People.¹² One of the strategies in the plan is improving the management of foreign workers, by reducing the reliance on low skilled foreign of 15 per cent of the total workforce by 2020. The Plan also aims to formulate a comprehensive immigration and employment policy for foreign workers, including taking into account the requirements of industry and the welfare of foreign workers.

C. Promotion and Protection of Human Rights on the Ground

10. The number of migrant workers in Malaysia is estimated to be around 4 million, which is composed of 2.5 million documented and 1.3 million undocumented migrant workers.¹³ They are employed in various labor sectors such as agriculture, construction, domestic work, manufacturing, plantation, the fishing industry and service industry. Indonesia is considered to be the main source of the migrant workers with the highest number, followed by Bangladesh, Myanmar and Nepal. According to ILO report in 2016, 56 % or over half

⁶ See <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271235.htm>

⁷ See http://asean.org/storage/2016/06/MA4_Workmes-Compensation-Act-1952-Act-273.pdf

⁸ See <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/10327/99503/F626669980/MYS10327.pdf>

⁹ See <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf>

¹⁰ See <http://www.dosh.gov.my/index.php/en/list-of-documents/acts/23-02-occupational-safety-and-health-act-1994-act-514/file>

¹¹ See <http://www.ilo.org/dyn/travail/docs/1496/Employment%20Act%201955.pdf>

¹² See the official document at http://www.pmo.gov.my/dokumenattached/RMK/RMK11_E.pdf

¹³ This estimation given by Asian Migrant Center, see in <https://www.asianmigrantcentre.org/malaysia>

of the regular workers in Malaysia between 2000 and 2014 was from Indonesia.¹⁴ Workers are dependent on their employers for their work permit and are often in a vulnerable situation.

11. Malaysia has experienced of growing aging population above 65 years old. Between 1970 and 2017, the number has almost doubled, from 3.3 % of the population in 1970 to 6.2 % in 2017.¹⁵ This has the impact on the increasing need to have people providing caregiving for the older people. ILO estimated the number of 300.000 to 400.000 migrant domestic workers, whose situation continues to be a major human rights concern.¹⁶ The majority of whom are women from Indonesia, the Philippines and Cambodia. Normally, the domestic workers work within a limited compound of the family, either in a house or apartment. Their interaction with the surrounding could be limited, either due to the restriction of movement by the employers or cultural barriers which might prevent them from having a larger social life. This situation leads to the difficulty to ensure accountability of employers. There has been continuous allegation that a large number of domestic workers suffer from abusive working conditions.
12. The UN Special Rapporteur on trafficking in persons, especially women and children visited Malaysia in 2015. In her report, she paid a special attention on the situation of domestic workers which are vulnerable and potential victims of trafficking in person. While not all domestic workers are victims of trafficking, a large number of those women and girls are trafficked into domestic servitude by employment agencies in their home country or Malaysia or employers in Malaysia. There has been allegation of complicity of State officials. Many fall victims to debt bondage when they assume an initial debt as part of the terms of employment. Widely reported abuses and exploitation that further contribute to the trafficking situation include breaches of contract, excessive recruitment fees, non-payment of salary, deductions from low wages, excessive working hours, a lack of rest days and the withholding of passports. Many domestic workers have also experienced unimaginable physical and mental abuse at the hand of their employers, which range from being deprived of food to beatings with electrical wires, scalding with hot water, harassment, psychological abuse and sexual assault.¹⁷
13. It is difficult to obtain accurate official statistics on the number of Indonesian migrant workers in Malaysia. However, as of November 2017, it was estimated between 2.7 to 3 million,¹⁸ as expressed by Mr. Yasonna Laoly, the Indonesian Minister of Law and Human Rights. The ratio of documented and undocumented migrant workers is estimated at 50:50. Indonesian migrant workers in Malaysia have often been exploited and tortured. They have limited access to health care and other services, which lead to permanent disabilities or death. The volume of complaints received from domestic workers, as well as a series of high profile cases of abuse disclosed by the media, led Indonesia to suspend deployment of domestic workers to Malaysia in 2009 pending a revised agreement.¹⁹ However, in 2011 Indonesia and Malaysia resumed another MoU with some additional clausal on labor protection, including the minimum wage. This MoU ended in 2016.
14. The Indonesian Province of East Nusa Tenggara (NTT Province) has been one of the main contributors of Indonesian migrant workers in Malaysia. It is estimated that 20% of 4.9

¹⁴ *Review of Labor Migration Policy in Malaysia*, published in 2016 by the ILO Regional Office for Asia and the Pacific, p.9.

¹⁵ See https://www.dosm.gov.my/v1/uploads/files/6_Newsletter/Ageing.pdf

¹⁶ *Review of Labor Migration Policy in Malaysia*, p.21.

¹⁷ See the report of the UN Special Rapporteur on Trafficking in persons, especially women and children, A/HRC/29/38/add.1

¹⁸ See <https://news.okezone.com/read/2017/11/22/340/1818240/ada-2-7-juta-tki-di-malaysia-menkumham-ini-jumlah-terbesar-dari-seluruh-dunia>

¹⁹ *Review of Labor Migration Policy in Malaysia*, p.14.

million of the population of this province live under the poverty line.²⁰ The Head of Manpower and Transmigration Office of NTT Province, Mr Bruno Kupok, affirmed that until 2018, there were 200,000 people from NTT Province working in Malaysia, spread over 201 locations. Of that amount, nearly 75 percent or 150.000 laborers are undocumented or illegal migrants.²¹

15. According to the Secretary of Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI), between January and 20 March 2018 alone, 19 undocumented Indonesian migrant workers from NTT Province died in Malaysia. In 2017, there were 62 Indonesian migrant workers from the same provinces who died in Malaysia, while in 2016, there were 46 cases.²² There has been a continuous call from the Indonesian civil society for moratorium on sending Indonesian migrant workers to foreign countries, especially Malaysia, where the rights of migrant workers are not always respected.²³
16. One of the recent examples is the case of Ms. Adelina Jemira Sau.²⁴ On the 11 February 2018, Ms. Sau, a 21-year old Indonesian maid from NTT Province, died allegedly as a result of mistreatment by her employer in Penang in Malaysia. Before dying, she was found sitting helpless on the porch of her employer's house in the company of a Rottweiler-style black dog tied to the rope beside her. She was rushed to Bukit Mertajam Hospital, but she passed away. The neighbors around the employer's house told police that, for over a month, Ms Sau was forced to sleep with a Rottweiler on her employer's porch.
17. When she was found, Ms Sau's head and face were swollen and her legs were covered with infected wounds.²⁵ Initially, she worked legally in Malaysia until her return to Indonesia in 2014. She went back to Malaysia to work a second time without going through the formal procedure. Therefore, she was allegedly a victim of human trafficking,²⁶ and working without visa for two years²⁷ which forced her to work in a deplorable condition until her death. The employer of Ms. Sau was charged of employing a foreign worker illegally and murder.
18. Another example is the death of Ms. Dolfina Abuk (30 years old), a resident of Kotafoun Village, Biboki District, North Central Timor, NTT Province. In November 2013, a labor broker named Mr. Johan Pandie (a.k.a Jon) recruited Ms. Abuk to become an Indonesian migrant worker. He was paid by Mr. Sefriadi Safroni Sinlaloe to recruit potential workers to be sent to work in Malaysia as a domestic helper.
19. Mr. Pandie helped her to get an identity card and passport which used different addresses than her real address. Initially, she was registered by an Indonesian recruiting agency, PT Bidar Putra Sukses. However, she failed the medical check-up and was declared to not be qualified as a migrant worker. Then, she was registered by Indonesian another agency - PT Khalifah Fierdaus Aulia and she was qualified to be a migrant worker. She was sent to

²⁰ This is estimation is given by VIVAT Indonesia which works extensively in NTT Province. See <https://www.ucanews.com/news/human-trafficking-a-rising-problem-in-indonesia/76994>

²¹ See <http://www.flobamora.net/berita/11329/2018-03-19/200-ribu-tki-asal-ntt-bekerja-di-malaysia>

²² See <http://www.bnp2tki.go.id/read/13088/Gubernur-NTT-Minta-BP3TKI-Kupang-Beri-Peran-pada-Aparat-Daerah>

²³ In 26 March 2018, a protest was organized in Jakarta by civil society to call for moratorium on sending Indonesian migrant workers to foreign countries. See <https://www.ucanews.com/news/indonesian-students-demand-end-to-human-trafficking/81909>

²⁴ Earlier, her name was written as Adelina Lisau. It was verified later that her real name was Adelina Jerima Sau. See

<https://www.cnnindonesia.com/internasional/20180217214907-106-276886/adelina-tki-yang-tewas-di-malaysia-dimakamkan-di-ntt>. Sometimes, she was referred as Adelina, which was her first name.

²⁵ <https://dunia.tempo.co/read/1060025/kisah-pilu-tkw-sekarat-di-samping-anjing-majikan-di-malaysia>

²⁶ See the statement of Director of Migrant Care at <http://www.thejakartapost.com/news/2018/02/17/adelina-alleged-victim-human-trafficking.html> and <https://www.theaustralian.com.au/news/world/death-of-maid-shines-light-on-abuse-of-guest-workers/news-story/db80a423e5a2a4b3799f9e7ac64c9e2d>

²⁷ See <http://jakartaglobe.id/news/indonesia-sends-diplomatic-note-calling-on-malaysia-to-prevent-abuse-of-migrant-workers/>

Malaysia.²⁸ The data of BNP2TKI recorded her as migrant worker sent by PT Khalifa Firdaus Aulia.

20. According to her employment document, Ms. Abuk's work contract in Malaysia ended on 28 February 2016. Between 28 February and 29 March 2016, she was sent back to her Malaysian recruiting agency, Puncak Mas SDN, while waiting to return to Indonesia. However, on 7 April 2016 she was reported to have died. Three days before that date, her family reported that she was in contact with them, and she said that she was in a good health and looked forward to going back to her village in Indonesia.
21. An autopsy was performed at Hospital Tengku Ampuan Rahimah Klang, Selangor, Malaysia on 8 April 2016, and Ms. Abuk's body was sent to her village in Indonesia on 9 April 2016. She was buried in the next day.²⁹ When Ms. Abuk's family opened the coffin, they saw that her body was full of stitches. She had stitches on her neck, and stitches running from her stomach to her back, as well as around the top circle of her head. Her body was deflated as if it was empty without organs inside. Her eyes were deflated, and her temples were shifted upward. Her family suspected that Ms Abuk died of unnatural causes and in suspicious circumstances. There were several questions that the family had regarding her death. There is also an allegation that her organs were taken from her body.
22. The case of Ms. Delfina Abuk was addressed by the Indonesian authorities as a case of trafficking in persons, especially regarding the trafficking of an Indonesian worker from NTT Province to Malaysia. On 19 December 2016, the Indonesian Supreme Court condemned Mr. Sefriadi Safroni Sinlalo to 11 years in prison, under the charge of bringing the Indonesian citizens outside Indonesian territory for the purpose of exploitation.³⁰

D. Recommendations for the Government of Malaysia:

- 1. To ratify without delay the ILO Convention No 189 on Domestic Workers;**
- 2. To ratify the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and UN Convention on the Protection of Rights of All Migrant Workers and Members of Their Families;**
- 3. To review regulation of employment agencies recruiting foreign workers in order to comply with the international human rights norms holding them accountable in cases of abuses, including human trafficking, as well as consider alternative models for recruitment of migrant workers;**
- 4. To ensure the protection of human rights of all migrant workers and their access to basic services regardless of their status;**
- 5. To reinforce measures to prevent abuses against migrant workers, hold offenders accountable and ensure redress for victims, including adequate compensation.**

²⁸ Summary from the decision of the Indonesian Supreme Court, Decision No. 31/Pid.Sus/2016/PN KfmTahun 2016 at <https://putusan.mahkamahagung.go.id/putusan/c90b343ea70d2c570b0c672f405ace96>

²⁹ See <https://www.ucanews.com/news/indonesian-priest-seeks-investigation-over-womans-death/75882>

³⁰ See the decision of Indonesian Supreme Court Nomor 31/Pid.Sus/2016/PN KfmTahun 2016 at <https://putusan.mahkamahagung.go.id/putusan/c90b343ea70d2c570b0c672f405ace96>